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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM
1001 I STREET
SECOND FLOOR
SACRAMENTO CALIFORNIA
PART 1 REBUTTAL

Wednesday, May 24, 2017
9:30 A.M.

VOLUME 48
Pages 1 - 122

Reported By: Deborah Fuqua, CSR No. 1248

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1 APPEARANCES:

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

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5 Tam Doduc, Co-Hearing Officer:

6 Felicia Marcus, Chair and Co-Hearing Officer:

7 Dorene D'Adamo, Board Member

8 Staff Present

9 Dana Heinrich, Senior Staff Attorney

10 Conny Mitterhofer, Senior Water Resources Control Engr.

11 Kyle Ochenduzsko, Senior Water Resources Control Engr.

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13 For California Department of Water Resources

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18 Ken Bogdan, Senior Attorney

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24 and Fish and Wildlife Service

25 Amy Aufdemberge, Assistant Regional Solicitor

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28 State Water Contractors

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35 (Continued)

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5 Water Impact Network, AquAlliance
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1 Wednesday, May 24, 2017

9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning,
5 everyone. Welcome back to this water rights change
6 petition hearing for the California WaterFix project.

7 I am Tam Doduc. Joining us shortly and will
8 be sitting to my right will be Board Chair and
9 Co-Hearing Officer Felicia Marcus. To my far right
10 right now is Board Member DeeDee D'Adamo. To my left
11 are Dana Heinrich, Conny Mitterhofer, and Kyle
12 Ochenduszko. We are also being assisted today by
13 Mr. Long and Mr. Baker.

14 Usual three announcements: In the event of an
15 alarm, if it sounds, we will evacuate. We will take
16 the stairs down to the first floor and exit to meet up
17 in the park. If you are not able to use the stairs,
18 please flag down one of the orange-garbed people. You
19 will not miss them. They will be wearing really bright
20 neon orange caps and vests, and they will direct you to
21 a protective area.

22 As always, this hearing is being recorded and
23 webcasted. So please speak into the microphone and
24 begin by identifying your name, yourself, and your
25 affiliation.

1 And the court reporter is with us again. The
2 transcript will be made available upon the completion
3 of Part 1. If you wish to have it sooner, please work
4 with her directly.

5 And finally and most importantly, since I
6 don't see Ms. Aufdemberge in the room, she who will for
7 now and always be providing this announcement if she is
8 in the room: Please take a moment and make sure that
9 all noise-making devices are put on silent, vibrate, or
10 do not disturb, unless you want to take
11 Ms. Aufdemberge's place on my bad list. All right.
12 With that, are there any housekeeping items we need to
address before we turn to Ms. Des Jardins?

14 Mr. Porgans, good to see you again.

15 MR. PORGANS: Good morning. Good to see you
16 also. I'd like to make a request to present a policy
17 statement before the Board.

18 CO-HEARING OFFICER DODUC: Mr. Porgans, I
19 actually have you presenting your rebuttal right after
20 Ms. Des Jardins. So you may provide your policy
21 statement then if you wish.

22 MR. PORGANS: Do you need me to give them the
23 copy of it?

24 CO-HEARING OFFICER DODUC: If you would like
25 to give Mr. Baker a copy, that would be fine.

1 MR. PORGANS: Thank you so much. I appreciate
2 that.

3 CO-HEARING OFF ICER DODUC: And we don't
4 believe the presentation of Ms. Des Jardins' case in
5 chief will take too long, Mr. Porgans. So we should be
6 able to get to you this morning.

7 All right. With that, not seeing any other
8 issues, Ms. Des Jardins.

9 MS. DES JARDINS: Thank you. I would like to
10 ask for 20 minutes for Dr. Williams' testimony. I
11 believe that he may not take the entire time, but it's
12 fairly detailed. It's about the tunnels' engineering.

13 CO-HEARING OFFICER DODUC: Well, let's see how
14 it goes.

15 MS. DES JARDINS: Okay.

16 CO-HEARING OFFICER DODUC: And does he need to
17 take the oath? And do you need to take the oath?

18 MS. DES JARDINS: I took it previously.

19 CO-HEARING OFFICER DODUC: You took it. Okay.
20 Please stand and raise your right hand. Is it
21 Mister or Doctor?

22 WITNESS WILLIAMS: Dr. Clyde Thomas Williams.

23 CO-HEARING OFFICER DODUC: Oh, Clyde Thomas
24 Williams. Okay.

25 (Witness Williams sworn)

1 CLYDE THOMAS WILLIAMS and DEIRDRE DES JARDINS
2 called as rebuttal witnesses by Group 37,
3 having been first duly sworn, were examined
4 and testified as hereinafter set forth:

5 CO-HEARING OFFICER DODUC: Thank you,
6 Dr. Williams. Please be seated.

7 And, Ms. Des Jardins, I'll note for the record
8 that you're being assisted by Mr. Jackson.

9 MR. JACKSON: Yes, Michael Jackson. I'm
10 making a special appearance on behalf of the California
11 Water Research Group. And I will try to be helpful if
12 I can.

13 CO-HEARING OFFICER DODUC: Thank you,
14 Mr. Jackson.

15 Ms. Des Jardins.

16 DIRECT EXAMINATION BY MS. DES JARDINS

17 MS. DES JARDINS: Dr. Williams, is DDJ-163 a
18 true and correct copy of your written testimony?

19 WITNESS WILLIAMS: Yes, it is.

20 MS. DES JARDINS: Is DDJ-162 a true and
21 correct copy of your statement of qualifications?

22 WITNESS WILLIAMS: Yes.

23 MS. DES JARDINS: Please summarize your
24 written testimony.

25 WITNESS WILLIAMS: Okay. I'm Dr. Tom

1 Williams, also known as Clyde Thomas Williams.

2 The basic elements for me and for the Board, I
3 believe, is that -- sorry. Let me give a little bit of
4 background since I'm a newbie.

5 I got my Ph.D. at Berkeley, 1967 through '68.

6 CO-HEARING OFFICER DODUC: Very smart to start
7 with brownie points, Dr. Williams.

8 WITNESS WILLIAMS: Tear gas isn't so bad.
9 Pepper spray [indicating].

10 I also did a lot of studies of the Pleistocene 11
deposits on San Pablo Bay and on Benicia and Suisun
12 Bay. I knew Roy Schliemann quite well at that time,
13 and we were trying to coordinate as to what the
14 Pleistocene had done.

15 I investigated the geotechnical borings for 16 the
central San Francisco Bay, trying to develop a 17
gradient from Stockton to the Golden Gate.

18 So I've had quite a bit of experience.
19 There's also a matter that, as a geologist 20
within the Department of Paleontology at the time, we
21 did extensive surveys from Bakersfield to Antioch, not
22 much on the north side, although I later worked with
23 the Corps of Engineers on the Black Butte Reservoir,
24 Department of Corrections on a couple of other things,
25 and did I my first EIR for the City of San Jose in

1 1972-'73 and contributed to either sections or large
2 parts of over 400 EIRs, EISs worldwide.

3 So I've been around.

4 MS. DES JARDINS: What's your experience with
5 tunnels and pipelines?

6 WITNESS WILLIAMS: Tunnels and pipelines,
7 big-diameter pipelines, Morro Bay to Chevron Oil,
8 and -- in Richmond and Chevron Oil in El Segundo.
9 Pipelines.

10 Tunnels, environmental control supervisor for 11 the
Red Line Phase 1 subway construction. Also
12 contributed to Phase 2 planning and to the east
13 extension of Red Line. So might say, in urban areas.
14 Overseas we also did a railroad tunnel of 13 15 miles
from the city of Fujairah in the U.A.E. on the 16 Arab
gulf to Dubai, where I worked a long time and
17 where we actually did all the planning and design for
18 an 80-meter, 250-foot-wide-diameter underground hotel.

19 So might say underground, I like. I've done
20 subway -- sorry -- sewer tunnels for Aleppo, Syria,
21 which no longer exists, and for several other
22 locations, Kuala Lumpur, et cetera.

23 How did I participate? Basically, saying
24 engineer with the environment and you will be safer.
25 It will work longer and will do better than if you try

1 to make it work else-wise.

2 So Shanghai -- soft-ground tunnels: Shanghai,
3 Singapore. Yes, there are big problems when you go
4 underground in muck, wet, flowing ground.

5 So I've been around.

6 Currently, I am retired but still active in
7 anything that involves my technical background. So
8 that's why I got involved in the WaterFix tunnels. I
9 don't care about how they get the water in. It's the
10 tunnels that I like.

11 So that's kind of a brief as to where I've
12 been worldwide; what I'm interested in, geology; and
13 how can I participate and help.

14 One of things, having been involved with the
15 Parsons Corporation for over 20 years, is I helped the
16 engineers do engineering. And I've been designated as
17 engineer in several overseas locations and even within
18 the United States.

19 We did a -- with URS Corporation, we did a study
20 of the Louisiana wetlands for the Corps of Engineers at
21 Baton Rouge, and we found that it was the gas exploration
22 and production that was causing the
23 subsidence, not sea-level rise.

24 So, lot of experience.

25 Now, for DWR, what do they want? They want to

1 go to contract and construction from current planning
2 and conceptual design stages. I have tried to
3 summarize my environmental, geological interests and
4 issues to: What is there? What will move or change?
5 How will it move; up or down, towards or away from the
6 project? What will make it move? The project itself?
7 Natural loadings or seismic events?

8 Being in Berkeley, I had several seismic
9 events. And what are the effects of moving? What can
10 be done about what is there, how it will move, and the
11 effects of moving?

12 So current basis of design and related
13 supporting information, in my opinion, is inadequate
14 and incomplete to meaningfully review, comment, and
15 support your decisions and to assess the risks and to
16 counter them for a safe, functional project, both in
17 construction and in operations.

18 Current designs use general tunneling guides
19 for firm-ground tunneling rather than those based upon
20 the actual weaker conditions that are present in the
21 Delta. And their inadequacies include lack of defined
22 critical facilities and insights such as levees,
23 channels, infrastructure crossings, and the important
24 connection of tunnels, shafts, vents to each other. So
25 individual tunnels may act one way, but the connections

1 may act a different way.

2 Current design, it's inadequate, incomplete
3 for meaningful review for assessment of the risks and
4 how to counter them. Current designs use some general
5 tunneling guides, but these do not work in the soft
6 ground. The general tunneling industry guidance
7 appears to have been used for, eh, a narrowly straight
8 tunnel corridor and minimized the levels -- or the
9 levees' and channels' undercrossings but retained three
10 turns in the tunnels themselves rather than at the
11 shafts, which would be more standard.

12 The horizontal separation between the tunnels 13 is, eh,
generally a good industrial guide of one to two 14 pipe
diameters or tunnel diameters. And at the
15 separation of shafts -- so that shafts aren't next to
16 shafts but at a safe distance -- one tunnel diameter
17 away from the tunnels is standard guidance.

18 CO-HEARING OFFICER DODUC: Dr. Williams, I'm
19 sorry. Let me interrupt here and ask Ms. Des Jardins
20 or Mr. Jackson to help me understand the linkage
21 between your testimony and the scope of Part 1.
22 We are focused on two issues, mainly, two key 23
issues: whether the petition initiates a new water
24 right and whether the proposed changes can cause
25 injury.

1 And I understand your background with respect
2 to tunnels, and I appreciate your critique of the
3 tunnel design, but I'm failing to make the connection
4 to those two key issues which are the focus of Part 1.

5 MS. DES JARDINS: There is a question which
6 the petitioners submitted extensive information of
7 whether the tunnels will be a reasonable method of
8 diversion and will be adequately safe for people and
9 projects on -- people and property on the surface. And
10 that is part of the decision, and this is responding to
11 extensive testimony that was submitted by the
12 petitioners, both written/oral testimony and exhibits.

13 CO-HEARING OFFICER DODUC: Mr. Jackson.

14 MR. JACKSON: In Dr. Williams' testimony and
15 exhibits, he indicates --

16 CO-HEARING OFFICER DODUC: Which I do have.

17 MR. JACKSON: He indicates that he is
18 responding to witness Bed- --

19 CO-HEARING OFFICER DODUC: Bednarski?

20 MR. JACKSON: Bednarski and Valles, who
21 testified in regard to the conceptual tunnel design,
22 and is critiquing that testimony on rebuttal.

23 CO-HEARING OFFICER DODUC: Okay. In glancing
24 through his written testimony -- well, let me rephrase
25 that.

1 Do you anticipate tying his testimony to the
2 issue of construction impacts?

3 MR. JACKSON: Yes. The question of whether or
4 not we can -- it's the standard question, whether or
5 not we can determine whether or not there is legal
6 injury to people who own land above the tunnel route.

7 CO-HEARING OFFICER DODUC: During the
8 construction?

9 MR. JACKSON: During construction and actually
10 after the construction if this is the concept of
11 construction used.

12 CO-HEARING OFFICER DODUC: All right.

13 MR. JACKSON: And that we would need to wait
14 to know what the actual construction was going to be
15 before we can make a determination of potential injury.

16 CO-HEARING OFFICER DODUC: All right. Thank
17 you for that clarification.

18 And I would encourage, Dr. Williams, that you 19 focus
your verbal testimony, to which time is limited, 20 to
that particular aspect. We have the rest of your
21 testimony in writing.

22 MS. DES JARDINS: On construction?

23 CO-HEARING OFFICER DODUC: Construction's
24 impacts, his analysis of how the construction may
25 potentially -- well, or as Mr. Jackson specified, how

1 the information, according to his analysis, may or may
2 not be adequate for determining impacts. I'm don't
3 want to put words in his mouth. I'm just --

4 MS. DES JARDINS: Yes.

5 CO-HEARING OFFICER DODUC: -- trying to
6 paraphrase what Mr. Jackson articulated.

7 MS. DES JARDINS: Okay. Thank you.

8 WITNESS WILLIAMS: Basically, it goes back to
9 a summary that -- do we have enough information as to
10 what's there? Do we have enough information as to how
11 it will behave under long-term and short-term events?
12 Do we have enough information regarding the consequences
13 of those events to mitigate them before
14 they happen, that is, a risk response plan? I haven't
15 seen it.

16 So we're quite concerned that the design of
17 the tunnel has to be sufficient to support the tunnel,
18 its operations, over its operational lifetime. And,
19 might say, construction is where it usually is a
20 problem because inadequate information usually
21 generates the largest number of change orders and
22 causes the greatest delay. So, might say -- I'll dive
23 into it quickly.

24 Okay. There's no specific consideration for
25 geotechnical information under the levees and channels.

1 So how does the shield operator know how to run it
2 under those? Will he know where they are underground?
3 There's a problem there, other high-risk areas.

4 So all of these general guidelines that they
5 have used are for firm ground. And there's very little
6 knowledge as to the response of wetted, saturated
7 underground formations under seismic events, under
8 natural loading, and then under the conditions of
9 driving a tunnel shield through the muck. So we're
10 quite concerned about that.

11 For the seismic, during construction and
12 during long-term operations, do we know how the
13 materials below 60-feet depth and the peat will
14 operate, will move? Will they move? Will they not
15 move? How much will they move? And the tunnel design
16 must reflect that.

17 And where the two things come together as to
18 the seismic response and the project is at every bend
19 in the tunnels and at every connection of a shaft, a
20 vent to the tunnels, because these are very different
21 things underground and when they are exposed to seismic
22 waves coming through.

23 In addition, normal settlement at, for a
24 shaft, is near zero, hopefully. But for a tunnel, they
25 can move. They are much more flexible than a founded

1 shaft. So we're quite concerned about the long-term
2 settlement at the eye of the shaft where the tunnel
3 either launches or is received. So that's a basic
4 element.

5 Seismicity. There's a lot of earthquakes in
6 California, and there's been 150 earthquakes in the
7 area surrounding the Delta -- or more. Question as to
8 what happens under repeated low-intensity earthquakes
9 versus major ones, and how are you going to plan for
10 those?

11 The current document says that we will plan
12 for a 5 percent in 50 years. However, the same
13 document says we designate this project as an essential
14 facility. That is, it should be preserved and
15 operational even during an earthquake and following,
16 which usually means a 2 percent event in 50 years
17 rather than a 5 percent. And that at least was
18 calculated as 0.6G. I said, "That high? Rather than
19 0.5?" Okay.

20 Then there's the question as to do we have the
21 geological information to deal with this? Is it
22 accessible? Can we get at it, and can we verify that
23 it is reliable, that it is sufficient, and that it is
24 complete?

25 So I'm quite concerned about the normal

1 operations. And since I've been in construction, I'm
2 very fearful of the construction impacts of a major
3 earthquake and/or normal settlement and/or the very
4 soft ground.

5 We don't have enough information. There's not
6 enough analysis. The modeling has no sensitivity runs
7 that we can find. So we're quite concerned about those
8 as they would influence the safety of surface
9 facilities, people, and the long-term operation of this
10 major project.

11 CO-HEARING OFFICER DODUC: Thank you,
12 Dr. Williams.

13 MS. DES JARDINS: Okay. So I'm going to
14 certify that DDJ-166 is a true and correct copy of my
15 rebuttal testimony. And I have previously submitted a
16 copy of my qualifications.

17 CO-HEARING OFFICER DODUC: All right. Let's
18 go ahead and give Ms. Des Jardins 15 minutes to present
19 her rebuttal.

20 MS. DES JARDINS: Yeah.

21 MR. JACKSON: Thank you very much.

22 MS. DES JARDINS: I'm mostly focusing on the
23 change petition and the Bureau's permits.

24 Can you queue up Exhibit SWRCB-12, Page 177
25 while I talk? Thank you.

1 So the Bureau of Reclamation is seeking to add
2 three new points of direct diversion to Permits 12721,
3 12722, and 12723. Those are their permits on the
4 Sacramento River. They total 18,000 cfs. And neither
5 the change petition nor the petitioner's case in chief
6 provides clear information on the current and proposed
7 total rates of direct diversion from the Sacramento
8 River and the Delta under these permits.
9 And the Delta Cross Channel is listed -- is a 10
permitted diversion under -- is this SWRCB-12?

11 MR. OCHENDUSZKO: Yes, it is.

12 MS. DES JARDINS: It's a permitted diversion
13 under there. So Page 177, please.

14 So this is where the Delta Cross Channel says.
15 And it says it is intended to divert 9,500 cfs of
16 Sacramento River water into the Delta channels. An
17 initial cut will be constructed to convey 4,500 cfs,
18 and it says the means of diverting the water required
19 in excess of that which can be conveyed by this cut in
20 existing channels will be determined on the basis of
21 information collected during the first years of
22 operation of the presently planned Delta Cross Channel
23 and will be presented at a later date.

24 I have not been able to find information on
25 the current total rate of diversion for this structure.

1 This additional information may indicate a
2 total diversion requirement slightly exceeding the
3 presently planned 9,500 cfs.

4 So let's go to -- I did get -- Exhibit
5 DDJ-137, please.

6 So the California Data Exchange Center has
7 sensor data for the flows in the Delta Cross Channel.
8 And I downloaded the -- the graphs with tidal flows
9 from 2012 to 2016. The graphs show peak tidal
10 diversions of 13,600 cfs in September of 2016.
11 This, I believe --

12 Let's go to Exhibit DDJ-138, please.

13 So the U.S. Geological Survey has tidally
14 filtered flow which is a tidally filtered average. The
15 tidally filtered average diversions range from 2,500 to
16 somewhat over 5,000 cfs.

17 It seems clear from the graphs that the
18 original application included peak tidal diversions in
19 the Delta Cross Channel. I believe this is also
20 referenced in Decision D990, which states, "In fixing
21 the rates of direct diversion to be allowed, the Board
22 is inclined to greater liberality than usual because of
23 the magnitude of the project and the complexities
24 involved in determining at this time the direct
25 diversion as distinguished from rediversion of stored

1 water.

2 "However, notwithstanding these
3 considerations, we would require greater particularity
4 in proof of direct diversion requirements, were we not
5 assured that no prejudice to others will result from
6 failure of applicant to produce such proof. This
7 assurance is provided by conditions which will be
8 imposed in the permits subjecting exports of water from
9 Delta to use within the Sacramento River basin and
10 Delta so that there can be no interference with future
11 development of these areas."

12 The Delta Cross Channel capacity, together
13 with the Delta-Mendota Canal, totals over 14,100 cfs.
14 According to the Bureau's permits, the Delta Cross
15 Channel and the Delta-Mendota Canal are over 78 percent
16 of the total permitted rate of diversion of 18,000 cfs.
17 The remainder of the 18,000 cfs in the Bureau's
18 original applications was for Sacramento Valley canals
19 and M and I contracts for cities in the Sacramento
20 Valley.

21 Please pull up Exhibit DDJ-165.

22 The State Water Resources Control Board record
23 room has the Bureau's progress report submitted to the
24 State Water Resources Control Board following decision D990.

25

1 It shows that Sacramento Valley canals were
2 the only diversion works that the Bureau listed as not
3 being completed in this progress report from 1970. The
4 proposed new diversions are in the Sacramento Delta,
5 not the Sacramento Valley, and are tunnels and not a
6 canal.

7 I believe that, with new 9,000-cfs conduits,
8 the total capacity of the diversion works will be
9 significantly higher than the Bureau's existing permits
10 which include the Delta Cross Channel. The Board needs
11 to examine whether the three new diversions for export
12 should be in a new application by the Bureau.

13 There is a joint point of diversion, and the
14 Board did give the Bureau a permit for unlimited rates
15 of diversion from Old River in Decision 1641 and added
16 Clifton Court Forebay as another point of diversion.
17 The limit -- only limit on the rate of diversion from
18 Old River to Clifton Court Forebay under the JPOD is
19 the Army Corps of Engineers' limit on three-day average
20 diversions, but the JPOD only applies for the Bureau to
21 diversions from Old River, which is in the San Joaquin
22 River watershed.

23 As far as -- I go into some other information
24 that's required under Title 23, California Code of
25 Regulations 794. I could not find current and proposed

1 amounts of water diverted under the Bureau's permits.

2 Without clearer information, the information
3 on the current and proposed rates of diversion, the
4 Board cannot determine if there's an increase in either
5 the total amount or total direct -- rate of direct
6 diversion.

7 Finally, I'd like to get to stored water. The
8 change petition does not provide information on current
9 and proposed releases from storage which are also
10 required under Title 23, Cal Code Regs 794.

11 Petitioners' and protestants' witnesses have
12 testified that their CalSim model does not represent
13 actual reservoir operations under low storage
14 conditions. There are also issues that the reservoir
15 operations for the CalSim II model were never
16 adequately validated.

17 Exhibit DDJ-121 show the reasons -- was an
18 excerpt from the 2003 CalSim II strategic review. They
19 show the reasons that the 2003 validation run for the
20 CalSim II model needs to be redone.

21 Exhibit DDJ-12, which I showed to the
22 petitioners' witnesses in Part 1A, was the 2004
23 response to the CalSim II strategic review. It showed
24 a commitment by the Department of Water Resources and
25 the Bureau of Reclamation to validate the CalSim II

1 modeling of system operations after improvements to the
2 Sacramento Valley hydrologic modeling.

3 On cross-examination, Eric Reyes stated that
4 he believed that the 2015 delivery reliability report
5 validated the model but indicated that he had not
6 looked at reservoir levels including dead pool.

7 In my opinion, this does not indicate any
8 actual validation of CalSim's modeling of reservoir
9 operations and storage releases.

10 Finally, with respect to releases of stored 11 water,
I wanted to note that Decision 1275, which is 12 Exhibit
DDJ-95, assumed -- which granted DWR's permits 13 for
diversion, assumed augmentation of flows on the
14 Sacramento River by 1 million acre-feet.

15 Clearly the water supply for proposed
16 diversions has changed since this permit has been
17 issued, but there's not clear information about the --
18 the proposed storage releases under the change.

19 And that concludes my testimony.

20 CO-HEARING OFFICER DODUC: Thank you,
21 Ms. Des Jardins.

22 I only have cross-examination by the
23 Department of Water Resources, estimated at 20 minutes
24 at this time.

25 Anyone else?

1 MS. MESERVE: Good morning. Osha Meserve for
2 LANDS. I would like ten minutes, please.

3 CO-HEARING OFFICER DODUC: All right. The
4 Department followed by Ms. Meserve.

5 MS. ANSLEY: Jolie-Anne Ansley for the
6 Department of Water Resources. I have about 20 to 30
7 minutes.

8 As you indicated, the first part of my
9 questions is to -- I have about nine to ten questions
10 about Dr. Williams' basis for his opinions and his
11 qualifications and work experience, which he himself
12 just testified to, obviously. And then I have about
13 nine questions that walk through a couple of the
14 assertions in his testimony regarding what is or is not
15 in the conceptual engineering report and some of the
16 conclusions he draws.

17 CO-HEARING OFFICER DODUC: So all of your
18 cross-examination will be for Dr. Williams?

19 MS. ANSLEY: All of our cross-examination will
20 be for Dr. Williams.

21 CO-HEARING OFFICER DODUC: Right. Thank you.

22 CROSS-EXAMINATION BY MS. ANSLEY

23 MS. ANSLEY: Good morning, Dr. Williams.

24 WITNESS WILLIAMS: Good morning.

25 MS. ANSLEY: Your testimony provided -- your

1 testimony provides expert conclusions on the overall
2 feasibility of the proposed tunnel design; is that
3 correct?

4 WITNESS WILLIAMS: At the current stage of
5 design, yeah.

6 MS. ANSLEY: And then you point out specific
7 design issues at the current stage of design; is that
8 correct?

9 WITNESS WILLIAMS: Yes.

10 MS. ANSLEY: Your educational background is in
11 geology and zoology; is that correct?

12 WITNESS WILLIAMS: Correct.

13 MS. ANSLEY: And you were awarded a Ph.D. in
14 paleontology from Berkeley in 1976?

15 WITNESS WILLIAMS: Yes.

16 MS. ANSLEY: And that was in -- your
17 dissertation was in mammalian fauna of the San
18 Francisco Bay Region?

19 WITNESS WILLIAMS: Late tertiary mammalian
20 fauna, yes.

21 MS. ANSLEY: Which I believe I heard you say
22 earlier was the Pleistocene?

23 WITNESS WILLIAMS: I had done research on the
24 Pleistocene in San Pablo Bay primarily because there
25 were fossils found in it, and I also did the

1 microfossils for the deposits at Rodeo and found the
2 same ones at Benicia.

3 MS. ANSLEY: My favorite epoch, so we can talk
4 afterwards.

5 Looking at your statement of qualifications
6 which is DDJ-162 -- I believe in your testimony it says
7 DDJ-160, but I believe on the exhibit list it's 162 --
8 a fair amount of your professional experience is in
9 environmental review and environmental compliance and
10 project management; is that correct? Is that a fair
11 characterization?

12 WITNESS WILLIAMS: Yes.

13 MS. ANSLEY: You're not an engineer, correct?

14 WITNESS WILLIAMS: I am not an -- certified or
15 registered engineer nor a certified, registered
16 geotechnical engineer or geologist.

17 MS. ANSLEY: Okay. So to clarify what you've
18 just said, you're not a licensed P.E. or professional
19 engineer?

20 WITNESS WILLIAMS: Correct.

21 MS. ANSLEY: Or a registered professional
22 geologist or hydrogeologist?

23 WITNESS WILLIAMS: Correct.

24 CO-HEARING OFFICER DODUC: But he is a Cal
25 grad.

1 MS. ANSLEY: That's right.

2 WITNESS WILLIAMS: You bet.

3 MS. ANSLEY: To be fair, I am too.

4 WITNESS WILLIAMS: Berkeley.

5 MS. ANSLEY: Yes, Berkeley.

6 So looking at your testimony, which is DDJ-163
7 -- and perhaps we should bring that up.

8 And if we could go to Page 2, please. Thank
9 you.

10 So on Page 2 of your testimony, you describe 11 your
tunneling and underground experience, which we
12 also heard you provide oral testimony on earlier today.

13 Of the tunneling projects that you've worked
14 on, what was the deepest tunnel?

15 WITNESS WILLIAMS: The deepest tunnel? 3,000
16 meters, going under the mountains between Fujairah and
17 Dubai, United Arab Emirates, railroad tunnel planning
18 and design.

19 MS. ANSLEY: I'm sorry. What was the depth
20 below ground surface?

21 WITNESS WILLIAMS: Eh, I'd say -- in feet I'd
22 say 4,000 feet.

23 MS. ANSLEY: Because -- okay. Because it went
24 through -- it went under a mountain?

25 WITNESS WILLIAMS: What?

1 MS. ANSLEY: Because it was passing underneath
2 a mountain, you said?

3 WITNESS WILLIAMS: It was passing under a
4 mountain. Pretty different conditions.

5 MS. ANSLEY: Yes. Any other tunneling
6 projects that you've worked on?

7 WITNESS WILLIAMS: For the depth of them?

8 MS. ANSLEY: Sure.

9 WITNESS WILLIAMS: For planning and design,
10 Shanghai sewage tunnel going under the Yellow River,
11 which was very soft ground. And then in Canton, China,
12 again, very soft ground, starting tunnels. We used an
13 earth-balanced pressure machine at that time -- or they
14 did. Sorry.

15 MS. ANSLEY: So that's if I have my count
16 correctly, that's three tunnel projects, and then is
17 one additional the L.A. Metro Red Line?

18 WITNESS WILLIAMS: Additional within the state
19 of California, the Red Line Phase 1, RTD at the time,
20 subway tunnel. And the deepest there was about 80
21 feet.

22 MS. ANSLEY: And on these -- and is that the
23 extent of your tunneling projects, four projects? And
24 I'm limiting this to tunnels not pipelines.

25 WITNESS WILLIAMS: As tunnels, we did the

1 planning and design for an Orange Line connection
2 between the Phase 2 Red Line. And we did our -- or I
3 did assistance on the Red Line Phase 2 design planning
4 and lots of geotechnical development for that,
5 including the gas blowout at the Ross store in 1985 due
6 to released gasses from an underground oil field.

7 MS. ANSLEY: So for these projects, these
8 tunneling projects that you just explained to us, was
9 your role environmental review and compliance?

10 WITNESS WILLIAMS: Environmental review,
11 compliance for the facilities themselves, but also as a
12 means of supplementing the planning and design,
13 actually, as to evaluating the geological character of
14 the materials under the supervision of a certified
15 geologist through the Parsons Corporation.

16 MS. ANSLEY: So a certified geologist from
17 Parsons was in charge of design?

18 WITNESS WILLIAMS: There's usually a senior
19 engineer who is certified that has to sign off on all
20 the documents, and we assisted.

21 MS. ANSLEY: Have you been the responsible
22 design engineer for any of these tunnel projects?

23 WITNESS WILLIAMS: Not within the state of
24 California. I'm currently retired.

25 MS. ANSLEY: I'm sorry. Did you say

1 "currently retired"?

2 WITNESS WILLIAMS: I am currently retired.

3 MS. ANSLEY: Oh, yes. I'm aware.

4 WITNESS WILLIAMS: I do it for fun.

5 MS. ANSLEY: So I believe you characterized
6 your role in these projects as helping the engineers do
7 engineering; is that correct?

8 WITNESS WILLIAMS: Yeah, and doing a lot of
9 field work for them and trying to help them understand
10 the geotechnical borings.

11 MS. ANSLEY: Madam Chair, at this time I'd
12 like to lodge an objection for the record.
13 Dr. Williams, though he has obvious, you know, work
14 experience in environmental review and compliance and
15 permitting and geological background, we believe that
16 he lacks the necessary expert qualifications in design
17 of tunnel projects of this magnitude to provide the
18 testimony that he is providing, specifically on design
19 criteria.

20 CO-HEARING OFFICER DODUC: Thank you,
21 Ms. Ansley. Your objection is overruled, but we will
22 consider it in weighing the testimony.

23 MS. ANSLEY: Thank you.

24 Moving on now to your conclusions and your 25
expert testimony, Dr. Williams, you're familiar with

1 the concept of conceptual versus final design in the
2 engineering of projects such as this, aren't you?

3 WITNESS WILLIAMS: Yes. And you forgot one
4 called "preliminary."

5 MS. ANSLEY: All right. Preliminary,
6 conceptual, and final design.

7 WITNESS WILLIAMS: Contract design also.

8 MS. ANSLEY: Is it your understanding that the
9 Cal WaterFix design is at the conceptual level at this
10 point?

11 WITNESS WILLIAMS: Then it should not be --
12 might say, done this way because of the size of the
13 project.

14 MS. ANSLEY: Madam Chair, can I move to strike
15 that as non-responsive to my question?

16 CO-HEARING OFFICER DODUC: What do you mean,
17 Dr. Williams, by "it should not be done this way"?

18 WITNESS WILLIAMS: Sorry, I --

19 MS. ANSLEY: Answer the Hearing Officer.

20 CO-HEARING OFFICER DODUC: I take precedence
21 over her.

22 WITNESS WILLIAMS: Oh, okay. And repeat the
23 question?

24 CO-HEARING OFFICER DODUC: Your answer to her
25 was "then it should not be done this way." I wanted to

1 know what you meant by "done this way." You mean the
2 way it's been designed?

3 WITNESS WILLIAMS: Okay. Basics, information.

4 There are 20 borings provided along the
5 alignment. It's over 150,000 feet long.

6 CO-HEARING OFFICER DODUC: I just want,
7 without getting into the details, the clarity -- I want
8 clarity in terms of what you were referring to when you
9 said "it should not be done this way."

10 Were you referring to the design, that the 11
design shouldn't be done this way?

12 WITNESS WILLIAMS: The design of the tunnel
13 itself is one thing. The next part is the -- is the
14 segment gaskets and connectors, and then, most
15 importantly, a liner or not. On the RTD liner -- on
16 the Red Line project, we had to put a membrane around
17 the tunnels and all subsurface facilities.

18 I reviewed it. We worked with Gundell, and
19 they put a 100-mil liner around everything underground
20 for gas and water.

21 CO-HEARING OFFICER DODUC: All right. Thank
22 you, Dr. Williams.

23 Ms. Ansley, was there an objection? Actually,
24 I don't remember now.

25 MS. ANSLEY: I just would like to object that

1 much of what he just said is beyond the scope of his
2 direct rebuttal as in terms of gaskets, liners used in
3 the Red Line.

4 MS. DES JARDINS: Excuse me. There was very
5 specific written testimony in the rebuttal about
6 gaskets.

7 CO-HEARING OFFICER DODUC: That's fine.
8 Overruled.
9 Ms. Ansley, could you please repeat your last 10
question?

11 MS. ANSLEY: I think my last question was just
12 whether he was aware -- maybe we could have it -- we
13 could have it read back if I'm wrong. But is he aware
14 that the Cal WaterFix is currently at the conceptual
15 design level? That's a yes-or-no question.

16 CO-HEARING OFFICER DODUC: Mr. --
17 Dr. Williams, that's the question.

18 WITNESS WILLIAMS: Yes.

19 MS. ANSLEY: Okay. Moving on.

20 In several places in your report, you cite the 21 2010
DWR -- well, the 2010 report titled "Draft Report 22 of the
Initial Analysis and Optimization of the
23 Pipeline/Tunnel Option," correct?

24 WITNESS WILLIAMS: Yes.

25 MS. ANSLEY: You're familiar with that report?

1 WITNESS WILLIAMS: I have reviewed it.

2 MS. ANSLEY: And these would be on Pages 4, 8,
3 and 9 of your testimony; is that correct?

4 WITNESS WILLIAMS: I believe so.

5 MS. ANSLEY: And you include tables from that
6 report?

7 WITNESS WILLIAMS: Yes.

8 MS. ANSLEY: Are you aware that there was a
9 draft conceptual engineering report in 2010 for the Cal
10 WaterFix?

11 WITNESS WILLIAMS: I am aware of it, yeah.

12 MS. ANSLEY: And you also are aware that there
13 is a draft conceptual engineering report in 2015 for
14 the Cal WaterFix?

15 WITNESS WILLIAMS: Yes.

16 MS. ANSLEY: Is it your understanding that the
17 project underwent substantial revision between 2010 and
18 2015?

19 WITNESS WILLIAMS: Yes.

20 MS. ANSLEY: So you understand that there has
21 been a change from smaller-diameter pipes with a higher
22 internal pressure to larger diameter gravity-fed pipes?

23 WITNESS WILLIAMS: Yes.

24 MS. ANSLEY: And is it your understanding
25 that, under the current conceptual engineering design,

1 the differential in pressure, internal to external in
2 the tunnels, is negligible or much lower than the 2010
3 conceptual engineering design?

4 WITNESS WILLIAMS: Much lower, yes.

5 MS. ANSLEY: Looking at Page 3 of your
6 testimony on Lines 8 to 9, do you see where you state,
7 "The construction of two 40-foot-diameter, 40-mile-long
8 tunnels in soft, wet sedimentary and peat soils is a
9 significant engineering challenge"?

10 WITNESS WILLIAMS: Correct.

11 MS. ANSLEY: What is your definition of "soft
12 ground"?

13 WITNESS WILLIAMS: That it requires a TBM with
14 pressure-regulating facilities.

15 MS. ANSLEY: Could you repeat that?

16 WITNESS WILLIAMS: That it requires a
17 tunnel-boring machine with pressure-regulating
18 capabilities, either through slurry or through air
19 pressure, hyperbaric.

20 The firm ground, not hard ground, can be done
21 with shields, without pressure balancing.

22 MS. ANSLEY: Dr. Williams, I think my question
23 is what do you consider soft ground?

24 WITNESS WILLIAMS: Soft ground is having
25 saturated water conditions that are -- form plastic

1 flow and with drainage to the face, to the face of the
2 tunnel field.

3 MS. ANSLEY: And you had testified earlier
4 that you're familiar with the 2015 conceptual engineer
5 report which is DWR-212; is that correct?

6 WITNESS WILLIAMS: Yes.

7 MS. ANSLEY: Can we call that up, DWR-212, and
8 go to pdf Page 53, please.

9 CO-HEARING OFFICER DODUC: And while that's
10 being pulled up, could someone please locate one of
11 those puffy things for Dr. Williams' microphone?

12 MR. HERRICK: A "puffy thing"?

13 CO-HEARING OFFICER DODUC: Whatever -- it's a
14 technical term, Mr. Herrick.

15 Now speak through it, Dr. Williams, and see. 16 Say
"good morning."

17 WITNESS WILLIAMS: Hello, good morning.

18 CO-HEARING OFFICER DODUC: Much better, thank
19 you.

20 WITNESS WILLIAMS: Thank you.

21 MS. ANSLEY: Thank you.

22 And so are you familiar with the graphic 23 boring
logs in this report?

24 WITNESS WILLIAMS: The which log?

25 MS. ANSLEY: The graphic -- these are the

1 graphic boring logs. They're Sheets --

2 WITNESS WILLIAMS: Yes.

3 MS. ANSLEY: They're Figure's 3-2, Sheets A
4 through D.

5 WITNESS WILLIAMS: Yeah.

6 MS. ANSLEY: And, well, I guess there's no way
7 to make this sheet better.

8 But -- so on Page 3 you had testified that
9 these tunnels are running through soft, wet sedimentary
10 and peat soils.

11 WITNESS WILLIAMS: If you could move it a
12 couple of sheets in.

13 MS. ANSLEY: I'd like to stay on this sheet.
14 I'm happy to go through sheets A through D.

15 WITNESS WILLIAMS: These are the intake
16 tunnels.

17 MS. ANSLEY: This is the tunnel profile.

18 WITNESS WILLIAMS: This is -- these are the
19 intake tunnel profiles, not the main profiles, main
20 tunnel profile. It just starts there at the right-hand
21 side.

22 MS. ANSLEY: I'm happy to scroll down.

23 Are these the sheets you relied on for your
24 testimony that there is peat soil at the tunnel profile
25 depth?

1 WITNESS WILLIAMS: Did I say at -- we don't
2 know. If you scroll one or two more in.

3 MS. ANSLEY: Okay. Which graphic boring log
4 would you like?

5 WITNESS WILLIAMS: The next one. Yeah. Okay.

6 At these depths, number one, it's soft ground.
7 There's a question as to below 60 feet, it may be firm
8 ground and a different tunneling shield might be used.

9 At the conceptual design phase, I do not
10 believe these borings express the variability or
11 heterogeneity of the deposits in a deltaic formation.
12 So I'm quite concerned that the soft ground, flowing
13 sands, liquefied sand, and peats may be present but are
14 not shown on this particular sample of borings.

15 MS. ANSLEY: So would you agree that the -- at
16 least the borings shown here on Figure 3-2 of the
17 conceptual engineering report show that, at the tunnel
18 profile depth here, the soil profile is dense sand and
19 stiff to very stiff clays?

20 WITNESS WILLIAMS: Yes.

21 MS. ANSLEY: And you're familiar with the -- I
22 know that we cannot read them on the screen here fully,
23 but you're familiar with the blow counts which are the
24 small numbers --

25 WITNESS WILLIAMS: The blow counts. Yeah.

1 MS. ANSLEY: -- on the right side of the
2 boring?

3 WITNESS WILLIAMS: Yeah.

4 MS. ANSLEY: And that these blow counts
5 indicate the density; that at profile, these are very
6 dense sands and stiff clays?

7 WITNESS WILLIAMS: With flowing sands and
8 stiff clays.

9 MS. ANSLEY: Moving on. Looking at Page 6 of
10 your testimony -- and I'm done with this slide.

11 Starting at Line 8 there. On Lines 8 through
12 13, you reference the American Society of Civil
13 Engineers 07-05 standards, and you state that these
14 apply to the WaterFix tunnel design, correct?

15 WITNESS WILLIAMS: Yeah. Based upon the
16 samples that they had available to them at the time; 20
17 out of 200.

18 MS. ANSLEY: Isn't it true that these are
19 applied to the intake structures, that these are
20 applicable to the intake structures and not the
21 tunnels?

22 WITNESS WILLIAMS: I don't recollect that
23 particular distinction, other than they were using a
24 firmer classification than -- or for the main tunnels.
25 I did not specifically review the intake tunnels.

1 MS. ANSLEY: And then looking at the next
2 sentence, where you talk about the ASCE 07-10
3 standards, do you see that?

4 WITNESS WILLIAMS: Yep, okay.

5 MS. ANSLEY: These standards are applicable to
6 above-ground building and structures; is that correct?

7 WITNESS WILLIAMS: Yeah.

8 MS. ANSLEY: Okay. Looking at Page 7, now.
9 And I have about three questions left.
10 Here, you cite the dissertation study or the 11
dissertation of Ian Tromans.

12 Do you see that there?

13 WITNESS WILLIAMS: Yeah.

14 MS. ANSLEY: And this dissertation was on
15 buried water supply pipelines in earthquake zones,
16 correct?

17 WITNESS WILLIAMS: Yes.

18 MS. ANSLEY: These were shallow water
19 pipelines or shallow water supply pipelines?

20 WITNESS WILLIAMS: Shallow-buried pipelines,
21 yeah.

22 MS. ANSLEY: Whereas the depths of the Cal
23 WaterFix tunnels are greater than a hundred feet below
24 ground surface; is that correct?

25 WITNESS WILLIAMS: Yes, yes.

1 MS. ANSLEY: Now, Mr. Troman's dissertation,
2 the non-uniformity of ground conditions he was talking
3 about in shallow ground was a combination of fill and
4 native soils; is that correct?

5 WITNESS WILLIAMS: I believe so.

6 MS. ANSLEY: Looking now at Page 9, the top of
7 Page 9. Thank you. Here you say that DWR-212, which
8 is the final draft conceptual engineering report dated
9 2015, does not disclose a preliminary leakage analysis.

10 Do you see that?

11 WITNESS WILLIAMS: Yes.

12 MS. ANSLEY: Are you familiar with Appendix J
13 of that report?

14 WITNESS WILLIAMS: Not at this time.

15 MS. ANSLEY: Have you reviewed the rebuttal
16 testimony of John Bednarski in this hearing?

17 WITNESS WILLIAMS: Could you repeat? Sorry.

18 MS. ANSLEY: Yeah, I'm sorry. That was a
19 little fast.

20 Have you reviewed the rebuttal testimony of
21 John Bednarski? Have you had a chance to review that?

22 WITNESS WILLIAMS: I have not.

23 MS. ANSLEY: Are you familiar, then, with the
24 rebuttal exhibits that accompanied his testimony?

25 WITNESS WILLIAMS: I'm not familiar with the

1 rebuttal, yeah.

2 MS. DES JARDINS: Objection. There's -- this
3 is not responsive to the rebuttal exhibits that were
4 submitted, and we've not tried to address those.

5 CO-HEARING OFFICER DODUC: That's fine,
6 Ms. Des Jardins. He obviously has not seen the
7 rebuttal testimony, so Ms. Ansley will not ask further
8 questions about it.

9 MR. JACKSON: And just for the record, we're
10 specifically not addressing other people's rebuttals
11 until surrebuttal.

12 CO-HEARING OFFICER DODUC: That's correct. If
13 you so wish, we can strike those questions. I don't
14 think it makes much difference.

15 MS. ANSLEY: Okay. I'm finished. Thank you
16 very much.

17 CO-HEARING OFFICER DODUC: Thank you,
18 Ms. Ansley.

19 Ms. Meserve, your cross, please.

20 WITNESS WILLIAMS: Everybody's friendly here.

21 CO-HEARING OFFICER DODUC: Dr. Williams, may I
22 ask that you turn the microphone off if you're going to
23 fiddle with that foam thingy? Thank you.

24 MS. MESERVE: Good morning. Osha Meserve for
25 LAND, et al. I just had a couple of questions for

1 Dr. Williams regarding his opinions regarding the above
2 ground impacts that he's concerned about, I believe.

3 CROSS-EXAMINATION BY MS. MESERVE

4 MS. MESERVE: Let's see. I would like to pull
5 up, if we could, please, SJC-73 which is a map from --
6 that we saw yesterday.

7 Dr. Williams, were you here yesterday?

8 WITNESS WILLIAMS: I am hard of hearing, even
9 with four ears.

10 MS. MESERVE: Dr. Williams, were you here at
11 the hearing yesterday?

12 WITNESS WILLIAMS: Yes, I was.

13 MS. MESERVE: And did you see the presentation
14 by Mr. Nakagawa regarding the groundwater wells that he
15 was concerned may be impacted by the proposed tunnels?

16 WITNESS WILLIAMS: I saw some of it. I was
17 preparing for it today. But I'm a groundwater man too.

18 MS. MESERVE: Excellent. I think in a moment
19 we'll have one of the slides that we presented
20 yesterday.

21 Thank you.

22 This slide, Dr. Williams, shows, from DWR's 23
23 database, the known different types of wells along the
24 tunnel alignment.

25 CO-HEARING OFFICER DODUC: Before you get to

1 your question, Ms. Meserve, I believe Mr. Mizell would
2 like to say something.

3 MR. MIZELL: Yes. I'd I like to object. We
4 just heard from Mr. Jackson that they would not be
5 addressing anybody's rebuttal material until
6 surrebuttal. Now we're having him opine upon rebuttal
7 material that was presented yesterday. I don't see the
8 connection to his rebuttal at this point because it's
9 gone beyond the scope.

10 CO-HEARING OFFICER DODUC: Perhaps if we allow
11 her to ask the question, we might be able to ascertain.

12 Ms. Meserve?

13 MS. MESERVE: Yes. I could use a different
14 map that we presented on the case in chief if that
15 would be preferable. However --

16 CO-HEARING OFFICER DODUC: No, no.
17 Ms. Meserve, I think what I'm most interested in
18 hearing from you is linking the line of questioning
19 that you're pursuing to his direct rebuttal testimony.
20 I believe you can do so.

21 MS. MESERVE: Yes, thank you. Yes, I'm not
22 asking Dr. Williams to comment upon the rebuttal. I'm
23 simply using the map that we had produced for
24 demonstrative purposes because it shows some of the
25 above-ground concerns that relate to his testimony.

1 CO-HEARING OFFICER DODUC: All right.

2 MS. MESERVE: So may I proceed?

3 CO-HEARING OFFICER DODUC: You may have some
4 leeway to proceed.

5 Objection overruled.

6 MS. MESERVE: Okay. So this figure shows
7 wells along the tunnel route.

8 What kind of concerns would you have for --
9 oh, and I should note that some of these wells are for
10 residential purposes. So with a lot of these wells,
11 there's also a residence because there's no domestic
12 water supply that's provided. This is in the country.

13 So what kinds of concerns would you have for
14 residents and their wells that would be above or near
15 the tunnel alignment based on the work you did for this
16 testimony?

17 THE COURT: Hold on.

18 Ms. Ansley.

19 MS. ANSLEY: Jolie-Anne Ansley for the
20 Department of Water Resources.

21 I'd like to lodge an objection that
22 Dr. Williams provided no testimony linking his
23 purported critiques of the engineering design to any impacts
24 to any water user including groundwater wells. So opining on
25 impacts to groundwater wells would be an

1 extension and outside the scope of his direct rebuttal.

2 CO-HEARING OFFICER DODUC: Dr. Williams, let
3 me perhaps try it this way. Amongst the various
4 concerns that you cited in your rebuttal testimony, are
5 any of those concerns applicable to the features shown
6 in this map, particularly the groundwater wells?

7 MS. MESERVE: And the homes that go with them.

8 CO-HEARING OFFICER DODUC: I'd refer back to
9 the impacts that you have cited in your written
10 rebuttal testimony.

11 WITNESS WILLIAMS: Yes, yes.

12 CO-HEARING OFFICER DODUC: Overruled,
13 Ms. Ansley.

14 WITNESS WILLIAMS: The first issue would be
15 how many of these wells go to 150 feet? How many of
16 these wells directly use aquifers that would be
17 penetrated or associated with the tunnel boring
18 machine? Again, one of the issues will be how much
19 pressure will be inside the tunnel boring machine
20 during construction.

21 CO-HEARING OFFICER DODUC: So, Dr. Williams,
22 if I might perhaps be a little bit more
23 straightforward.

24 All the concerns, all of the deficiencies that
25 you alleged in your rebuttal testimony could

1 potentially apply to all others -- areas along the
2 construction zone of impact?

3 WITNESS WILLIAMS: Yes. Specifically
4 groundwater usually connects with other groundwater
5 and, at the tunnel boring machine and its location,
6 creates a pressure. It's called "heave" and/or "boils"
7 and/or "blowouts," depending upon the pressure
8 differences. Those could move groundwater from a
9 deeper depth into a shallower groundwater, depending on
10 the details of that particular groundwater aquifer.

11 CO-HEARING OFFICER DODUC: And one more
12 question, Ms. Meserve, before I turn it back to you.
13 So in your written testimony, when you discuss 14 supply
and impacts to people surrounding those areas, 15 would
that, those impacts, would those statements in
16 your testimony maybe also be applicable to the area
17 here that Ms. Meserve has put up?

18 WITNESS WILLIAMS: Yes. As a geologist, I
19 first look to the levees, then to the channels, then to
20 all of the people on the surface and their existing
21 facilities. Will they be endangered by a failure of
22 the tunnel-boring machine?

23 During operations, the question would be if
24 the tunnel stays intact and is not affected and is an
25 essential facility and thereby further protected, then

1 the protection extends to whatever is around it and
2 above it.

3 CO-HEARING OFFICER DODUC: All right. Thank
4 you, Dr. Williams.

5 Ms. Meserve?

6 MS. MESERVE: And so just to be clear, you
7 touched on at the end of your response just now, would
8 your concern extend into the operation of the project,
9 not just construction, correct?

10 WITNESS WILLIAMS: In -- yes. In the
11 operations, the central issue is over a long-term are
12 you going to have a 0.6G seismic event? And what
13 happens to that tunnel under a 0.6G event, and what's
14 going to happen to everything associated with it? Will
15 it go down? Will it go up?

16 MS. MESERVE: So keeping with an example of a
17 home that was near the alignment, could the -- a -- if
18 an earthquake event, what would your concern be with a
19 home that was under the alignment?

20 WITNESS WILLIAMS: Foundation heave or
21 foundation settlement.

22 MS. MESERVE: And could there be -- if there
23 was a leak, would that cause a concern for the
24 overlying areas?

25 WITNESS WILLIAMS: For -- first, for the

1 aquifers that would be directly affected by a change in
2 the 150-foot depth aquifers. Then, as to, if there's
3 enough, then it might go higher. But it's basically a
4 matter that all the groundwater, for me, is connected
5 until proven isolated.

6 MS. MESERVE: And did you investigate whether
7 any such information had been gathered by the
8 petitioners in order to support their petition? Like,
9 in the CER, did you see anything like that?

10 WITNESS WILLIAMS: I would like to, but I have
11 not.

12 MS. MESERVE: Okay. Now moving to Page 7 of
13 your testimony up at the top, you say that
14 site-specific analysis should have been developed, and there
15 should have been extensive geotechnical exploration.

16

17 In your experience working on tunnel projects,
18 can you tell us when this type of detailed data is
19 usually collected?

20 WITNESS WILLIAMS: For such a large project, I
21 would have expected at least one boring in a thousand
22 feet, so roughly over a hundred borings. And then a
23 boring for, might say, one for each shaft, and perhaps
24 one for each side of the levee or one side of the levy,
25 channel, other side of the levees. So there's three

1 for every levee crossing.

2 And then we have to remember that there are
3 two tunnels. Will the geological conditions along one
4 tunnel alignment be the same as on the other tunnel
5 alignment in a section of an active deltaic deposit
6 with many cross-channels.

7 MS. MESERVE: With your permission, I have I
8 think two or three more questions. Thank you.
9 And so just to clarify, what would you think 10 the
timing of this type of exploration would be? Would
11 it be to determine the initial feasibility of the
12 proposed project, for instance?

13 WITNESS WILLIAMS: Usually it's -- in good
14 conceptual design, we want to identify all the problems
15 upfront, see what information we have available,
16 supplement that information to those critical
17 facilities. And that should have been done during
18 conceptual design. That's why she doesn't know where
19 you're going to go in preliminary design.

20 MS. MESERVE: And so would it be your opinion
21 that, in order to determine the feasibility of
22 alignment, you would need this information?

23 WITNESS WILLIAMS: For me, yes.

24 MS. MESERVE: A little earlier you looked at
25 the boring log profiles from the CER.

1 Just to clarify, there were 20 borings done
2 for this particular --

3 WITNESS WILLIAMS: For the main tunnels, times
4 two, there were only 20 borings.

5 MS. MESERVE: So you said every hundred feet.
6 So --

7 WITNESS WILLIAMS: Thousand.

8 MS. MESERVE: Thousand feet. So how many
9 borings would you, in your opinion, expect to see?

10 WITNESS WILLIAMS: Roughly 400.

11 MS. MESERVE: Thank you. No further
12 questions.

13 CO-HEARING OFFICER DODUC: Thank you,
14 Ms. Meserve.

15 Any redirect, Ms. Des Jardins?

16 I'm sorry. Mr. Porgans. Did you -- I'm
17 sorry. Did you wish to cross?

18 MR. PORGANS: I just had one question, if I
19 may ask Ms. Des Jardins.

20 CO-HEARING OFFICER DODUC: Oh, yes. Please
21 come up.

22 Ms. Suard?

23 MS. SUARD: Yes. Nikki Suard with Snug
24 Harbor. I would like to ask just brief few questions.

25 CO-HEARING OFFICER DODUC: All right.

1 MS. SUARD: Thank you.

2 CO-HEARING OFFICER DODUC: You may ask your
3 questions after Mr. Porgans.

4 MR. PORGANS: I just have one question --

5 CO-HEARING OFFICER DODUC: Mr. Porgans, I
6 don't believe the microphone is on.

7 WITNESS WILLIAMS: I'm hard of hearing. I
8 have four ears right now.

9 MR. PORGANS: Thank you.

10 Yes, I have one question for Ms. Des Jardins.

11 I'd like to get the exhibit number that you
12 had up on the screen that mentioned the capacity of the
13 Cross Delta Channel. Do you know the number of that
14 exhibit?

15 MS. DES JARDINS: Yeah, just a minute. Let me
16 look it up. So do you mean the California Data
17 Exchange Center data or the --

18 CO-HEARING OFFICER DODUC: I'm sorry.
19 Mr. Porgans, did you have a question about that
20 exhibit, or did you just want that exhibit?

21 MR. PORGANS: I want to identify the exhibit
22 so I may make reference to it later.

23 CO-HEARING OFFICER DODUC: All right. May I
24 ask that Ms. Des Jardins give you that upon the
25 completion of her testimony?

1 MR. PORGANS: Thank you so much.

2 CO-HEARING OFFICER DODUC: Thank you.

3 Ms. Suard.

4 CROSS-EXAMINATION BY MS. SUARD

5 MS. SUARD: Good afternoon.

6 WITNESS WILLIAMS: Good afternoon -- good
7 morning.

8 MS. SUARD: Good morning. You're right. I'm
9 up really early, so it feels like afternoon for me.

10 CO-HEARING OFFICER DODUC: You were trying to
11 test out his hearing, weren't you?

12 MS. SUARD: I have a question about when --
13 you talked about your experience with tunnels that are
14 built in situations similar to the Delta.

15 WITNESS WILLIAMS: Or worse.

16 MS. SUARD: Hmm?

17 WITNESS WILLIAMS: Or worse.

18 MS. SUARD: And you talked about Baton Rouge
19 as one of those locations?

20 WITNESS WILLIAMS: Repeat?

21 MS. SUARD: You talked about Baton Rouge as
22 one of those locations?

23 WITNESS WILLIAMS: That one is a study for the
24 Corps of Engineers, Baton Rouge Office, of the
25 Louisiana coastline wetlands and their appreciation as

1 to what was causing their losses. No tunnel was
2 involved.

3 MS. SUARD: Okay. So I will go back to that.
4 But when -- on any tunnel where water was involved, what
5 happened to the water that was drawn out to create the
6 shafts and install the tunnels? What was done with
7 that water that was pulled out?

8 WITNESS WILLIAMS: Usually it's treated and
9 discharged. We had the same problem with the Red Line
10 Phase 1 tunneling. We had 4,000 gallons per day of
11 dewatering. We had to treat it in order to discharge
12 it into the Los Angeles River.

13 MS. SUARD: "Treat it," meaning test it for
14 all kinds of --

15 WITNESS WILLIAMS: I say we had to test for,
16 especially, hydrogen sulfide, chlorides, and sediment
17 and had to remove down to a safe -- better than safe
18 drinking water level for discharge to the L.A. River,
19 which had severe receiving water quality requirements.

20 MS. SUARD: Okay. So if the WaterFix project
21 has not proposed any treatment or -- or they're
22 proposing distributing right back into the Sacramento
23 River, is what I believe is the proposal. I read there
24 was no treatment plan.

25 Would -- what would be your opinion of that

1 type of a plan?

2 CO-HEARING OFFICER DODUC: Hold on,
3 Dr. Williams.

4 Ms. Ansley?

5 MS. ANSLEY: Yes. Jolie-Anne Ansley.

6 Dr. Williams' testimony in no way talks about
7 the mechanism of dewatering or treatment or discharge,
8 nothing on that level of specificity and certainly not
9 even on that topic. So of course I would object that
10 it's beyond the scope of his rebuttal testimony.

11 CO-HEARING OFFICER DODUC: Mr. Jackson,
12 Ms. Des Jardins?

13 MS. DES JARDINS: I do have -- oh, about the 14
14 rebuttal testimony? Yeah, it does not --

15 CO-HEARING OFFICER DODUC: It does not.

16 MS. DES JARDINS: -- discuss discharges.

17 CO-HEARING OFFICER DODUC: All right.

18 Sustained.

19 Ms. Suard, next question.

20 MS. SUARD: You spoke about a subsidence and
21 fracking in the Baton Rouge area, correct?

22 WITNESS WILLIAMS: It was specifically for the
23 effects on the wetlands. We have the Mississippi River
24 and coastal Louisiana. Yeah.

25 MS. SUARD: Would you have any concern if the

1 proposed tunnel pathway is located in areas that are
2 subject to fracking and substantial withdrawal of
3 natural gas?

4 CO-HEARING OFFICER DODUC: I sense an
5 objection coming because his testimony does not address
6 the issue of fracking.

7 WITNESS WILLIAMS: And I would not.

8 CO-HEARING OFFICER DODUC: He's not able to
9 answer your question, I don't believe.

10 WITNESS WILLIAMS: There were two points, one
11 for production, one for fracking.

12 MS. SUARD: Okay. I was referring to the
13 subsidence question. And is there any concern
14 regarding factors that would cause subsidence besides
15 earthquakes if tunnels were built?

16 CO-HEARING OFFICER DODUC: Nice pivot,
17 Ms. Suard, very nice.

18 MS. SUARD: I'm learning.

19 WITNESS WILLIAMS: I'm very familiar with
20 DOGGR and implications of excessive production from oil
21 and gas fields. I am working with the Aliso Canyon
22 people --

23 CO-HEARING OFFICER DODUC: All right. Now
24 you're getting into details that's making Ms. Ansley
25 very nervous.

1 WITNESS WILLIAMS: Specific for the hearing.

2 CO-HEARING OFFICER DODUC: But you have
3 answered Ms. Suard's question.

4 MS. SUARD: I'm not sure I heard the answer.
5 Specific to the Delta?

6 WITNESS WILLIAMS: Yes, for the Delta gas
7 fields. They have extracted gas. The important thing
8 would be have they compensated with water injection for
9 the production of gas?

10 In the ports of Long Beach and L.A., excessive
11 production of oil and gas led to 30 feet of subsidence.
12 I do not know if the gas fields have ever been measured
13 as to production versus injection or to the surface
14 elevations and the production relationship.

15 CO-HEARING OFFICER DODUC: All right. I'm
16 going to stop it because we're way beyond the scope of
17 his rebuttal.

18 WITNESS WILLIAMS: I can do it.

19 CO-HEARING OFFICER DODUC: All right. Any
20 redirect?

21 MS. DES JARDINS: Yeah, actually I do have one
22 question. I wanted to go back to -- on Page 6 of your 23
23 testimony, you --

24 Can we pull up Page 6, please, of Exhibit
25 DDJ-163.

1 You referenced the American Society of Civil
2 Engineers' 07-10, minimum design loads for buildings
3 and other structures.

4 Is it these standards which design -- define
5 seismic criteria for essential facilities?

6 WITNESS WILLIAMS: Basically, no. These do
7 not cover the seismic design. However, they would be
8 related through the condition of the soil and how much
9 seismic waves would be attenuated both in the
10 horizontal distance and in the vertical profiles.

11 MS. DES JARDINS: Thank you.

12 CO-HEARING OFFICER DODUC: Thank you.

13 Any recross? Not seeing any at this time,
14 Ms. Des Jardins, do you wish to move your exhibits?

15 I'm sorry. Ms. Ansley?

16 MS. ANSLEY: I apologize. I was waiting for
17 that moment.

18 I do have an objection to lodge to some of
19 Ms. Des Jardins' rebuttal exhibits. Just a second.

20 Our objection is that there are a number of
21 exhibits that have been submitted onto the exhibit list
22 which were not used on cross or not used in direct
23 testimony. Therefore, they lack foundation and
24 relevance -- or demonstrated relevance to the Cal
25 WaterFix proceeding here. And I do have a list of

1 numbers, and we have tried our very best to, you know,
2 confirm this list. And I'd be happy to read off the
3 numbers.

4 CO-HEARING OFFICER DODUC: Hold on. Hold on.
5 Ms. Des Jardins?

6 MS. DES JARDINS: I apologize for that. I did
7 use some exhibits during -- I gave a list. There was
8 some exhibits that were -- I had produced to cross, and
9 they were all put on the website. And I was not able
10 to confirm exactly which -- which ones. I do have a
11 list. So yes, I can -- we can look at that.

12 MS. ANSLEY: I would prefer to put on the
13 record which exhibits I believe they are. And then I'm
14 happy to have her withdraw them.

15 MS. DES JARDINS: I haven't been able to get a
16 copy of the transcripts to verify exactly which ones
17 were used.

18 CO-HEARING OFFICER DODUC: All right.
19 Ms. Meserve?

20 MS. ANSLEY: May I lodge the list real fast?

21 CO-HEARING OFFICER DODUC: Sure.

22 MS. ANSLEY: The exhibits I'm talking about
23 specifically -- right.

24 The exhibits I'm talking about specifically
25 are all DDJ exhibits. The numbers are 186, 188, 189,

1 191, 193, 196, 198, 200, 201, 202, 205, and 208. Thank
2 you.

3 CO-HEARING OFFICER DODUC: Ms. Meserve?

4 MS. MESERVE: Let's see. So I just wanted to
5 perhaps refresh the recollection of folks regarding the
6 February 21st ruling with respect to this objection. I
7 think it applies.

8 On Page 16, the Hearing Officers clarified
9 that there does not necessarily need to be sponsoring
10 testimony for each exhibit and that it's up to the
11 Hearing Officers, you know, my understanding of it,
12 whether they think it's useful and credible.

13 And I would say if DWR had specific questions
14 or objections to exhibits, you know, they had
15 Ms. Des Jardins and her witness here today, and they 16
should ask those questions, if they have them, about 17 the
authenticity or foundation.

18 MR. JACKSON: And on behalf of
19 Ms. Des Jardins, I would like to join that. That's my
20 understanding as well.

21 CO-HEARING OFFICER DODUC: Ms. Ansley?

22 MS. ANSLEY: Yeah, I would like to then
23 counter the objection. I think we also addressed this
24 issue in Part 1 with a number of other parties'
25 exhibits -- that it is our understanding that, when

1 parties lodge rebuttal exhibits, they're lodging the
2 exhibits that go with their direct testimony. And then
3 as cross proceeds and they use exhibits on cross,
4 obviously, as we can see, they update their exhibit
5 list to reflect the exhibits they're using on cross.

6 What we have here, however, is the lodging of
7 a large number of exhibits which were then not even
8 used on rebuttal. So I also believe that this is sort
9 of outside the procedure of introducing evidence upon
10 rebuttal and that this is an instance of perhaps
11 putting things in the record that you might want later
12 but you have demonstrated no use for on rebuttal in
13 support of your rebuttal testimony.

14 CO-HEARING OFFICER DODUC: Okay.

15 Ms. Des Jardins?

16 MS. DES JARDINS: I would like to say that
17 some of the exhibits will be used in surrebuttal. This
18 is a technical issue again. This is a memory stick I
19 gave to the hearing team when I did cross-examination.
20 And all of the exhibits, not just the ones used in
21 cross, were moved there.

22 I suggest that I submit -- I submit these, and 23 the
hearing team does not need to -- the Hearing

24 Officer does not need to accept this. It happened in
25 Part 1A -- does not need to accept these into evidence.

1 Some of them will be offered on surrebuttal.

2 CO-HEARING OFFICER DODUC: That's fine,
3 Ms. Des Jardins. I've listened to all of you.

4 Ms. Ansley, your objection is overruled.

5 I will thank Ms. Meserve for the reminder of
6 our previous ruling. We will take all the exhibits
7 under consideration -- maybe not, my counsel --

8 MS. HEINRICH: I'm sorry, but I don't think
9 the record here is very clear.

10 It's not clear to me at this point,
11 Ms. Des Jardins, whether you're offering these exhibits
12 into evidence or not. It sounds like you did not
13 intend to do that, that these are just exhibits that
14 you uploaded during the course of cross-examination of
15 other rebuttal witnesses and these were not intended to
16 be rebuttal exhibits for your own rebuttal that you
17 submitted by the deadline before --

18 MS. DES JARDINS: Yeah, there isn't a
19 procedure defined right now for submission of rebuttal
20 exhibits. And I would notice that exhibits during --
21 introduced in cross-examination during rebuttal, and I
22 would notice that some of the other parties asked about
23 exhibits -- Ms. Ansley, I believe her objection started
24 with DDJ-186.

25 I could -- I just can't deal on-the-fly with

1 pulling out exactly. My list, service list, when I
2 served the most recent exhibit, did list the ones that
3 I believed were introduced. I just have not been able
4 to verify that with the transcript.

5 CO-HEARING OFFICER DODUC: All right. So
6 thank you for the clarification. You are not moving,
7 then, all these exhibits into the record?

8 MS. DES JARDINS: May I --

9 CO-HEARING OFFICER DODUC: You may have -- you
10 may have 24 hours -- well, until 11:00 o'clock tomorrow
11 to submit the list of exhibits that you wish to move
12 into the record as part of your rebuttal testimony.

13 MS. DES JARDINS: Thank you.

14 CO-HEARING OFFICER DODUC: All right. And,
15 Ms. Ansley, your objections are noted.
16 And, Ms. Des Jardins, do you have -- have you 17
17 written down the list of exhibits that Ms. Ansley
18 specifically cited?

19 MS. DES JARDINS: No, I have not.

20 CO-HEARING OFFICER DODUC: Then I suggest --

21 MS. DES JARDINS: I tried to take notes.

22 CO-HEARING OFFICER DODUC: I suggest you write
23 them down right now.

24 MS. DES JARDINS: Okay.

25 CO-HEARING OFFICER DODUC: Ready?

1 MS. DES JARDINS: Yes.

2 CO-HEARING OFFICER DODUC: 186, 188, 189, 191,
3 193, 196, 198, 200, 201, 202, 205, 208.

4 Have I missed any, Ms. Ansley, who has not
5 been paying attention?

6 MS. ANSLEY: I believe you have them.

7 CO-HEARING OFFICER DODUC: All right. Thank
8 you. All right.

9 With that, thank you. We will go ahead and 10
take our 15-minute break. When we return,
11 Mr. Porgans --

12 MR. JACKSON: I have one point.

13 CO-HEARING OFFICER DODUC: I'm sorry.

14 MR. JACKSON: Other than those, the rest of --
15 she's moving the rest of her exhibits in. Other than
16 the ones that were noted, she has --

17 CO-HEARING OFFICER DODUC: Just do it all at
18 once when she submits her material tomorrow.

19 MS. DES JARDINS: Okay. I will submit a
20 written list of exhibits.

21 CO-HEARING OFFICER DODUC: And now that you

22 know the ones to which Ms. Ansley has objected to,

23 please pay close attention to those.

24 Mr. Herrick?

25 MR. HERRICK: John Herrick, South Delta

1 parties. I apologize for delaying this.

2 I'm not sure the doctor was asked that his
3 testimony was a true and correct copy, although
4 Ms. Des Jardins did for hers. I'm not sure he was
5 asked.

6 MS. ANSLEY: Yes, I did at the beginning.
7 Yes.

8 MR. HERRICK: Just checking. Sorry. Thank
9 you.

10 MR. JACKSON: Could we do it again to make
11 sure?

12 CO-HEARING OFFICER DODUC: He's a Cal grad.
13 Of course they're true and correct.

14 MR. JACKSON: All right.

15 CO-HEARING OFFICER DODUC: Dr. Williams, will
16 you affirm that -- what was your testimony again?

17 MS. DES JARDINS: Exhibit DDJ-163 is a true
18 and correct copy of your testimony?

19 WITNESS WILLIAMS: Yes, I do.

20 MS. DES JARDINS: Is Exhibit DDJ-162 a true
21 and correct copy of your statement of qualifications?

22 WITNESS WILLIAMS: Yes, it is.

23 CO-HEARING OFFICER DODUC: All right. Thank
24 you. With that, when we return from our break,
25 Mr. Porgans will present his opening/policy statement,

1 five minutes, and then he'll present his rebuttal
2 testimony, 15 minutes.

3 We will return at 11:15. Thank you.

4 (Recess taken)

5 CO-HEARING OFFICER DODUC: Mr. Porgans, you
6 want to make an opening/policy statement?

7 MR. PORGANS: Yes.

8 CO-HEARING OFFICER DODUC: Please do so.
9 We'll give you five minutes to do that. And your
10 microphone is not on, I don't believe.

11 MR. PORGANS: I'll try to get through it as
12 quickly as possible. Thank you for affording me that
13 opportunity.

14 CO-HEARING OFFICER DODUC: Let's do this. you
15 have 5 minutes and then 15 minutes for you rebuttal
16 testimony.

17 So why don't we go ahead and just put 20
18 minutes on the clock. And Mr. Porgans may use that
19 however he needs to.

20 MR. PORGANS: Thank you so much for that.

21 PATRICK PORGANS,

22 called as a rebuttal witness by Protestant
23 Group 40, having been previously duly sworn
24 was examined and testified as hereinafter
25 set forth:

1 DIRECT EXAMINATION BY MR. PORGANS (OF MR. PORGANS)

2 MR. PORGANS: My name is Patrick Porgans. I'm
3 with Porgans & Associates, and I'm involved in these
4 proceedings as a de facto public trustee.

5 I have about 43 years -- you can put this up
6 on the screen, if you would, my policy statement,
7 because people may not be able to hear me.

8 I'm a 43-year veteran, seasoned participant,
9 witness in the State Water Board's Water Right Decision
10 D1485, D1630, D1641, the 1975 Bay-Delta Water Quality
11 Control Plan, the 1982 Coordinated Operating Agreement
12 between DWR and the Federal Bureau of Reclamation, the
13 1982 defeat of the Peripheral Canal --

14 (Reporter interruption)

15 THE REPORTER: I'm sorry, Mr. Porgans. Can
16 you please slow down when you read?

17 MR. PORGANS: I'm sorry about that.
18 That's another thing. I -- somebody says I 19
get mad at these meetings. I'm not mad at anybody,
20 believe me. If I ever made that inference, forgive me;
21 it's not personal.

22 At any rate, so I was saying that I was
23 involved the Monterey agreement, the 1995 Bay-Delta
24 Water Quality Control Plan, the Clean Water Act, the
25 303 Listings, the 1982 CVPIA Act, and the regional

1 water quality control plan for many of the State's nine
2 hydrological regions, CALFED, the Bay-Delta -- the
3 Bay-Delta Conservation Plan, all of which are promoted under
4 auspices that they would improve conditions that heretofore
5 have contributed to the demise of the Delta ecosystem.

6 I do not have a hidden agenda. I do not own
7 any land or any water. My primary interest is to
8 ensure the economic and ecological sustainability of
9 the Delta.

10

11 The manner in which the California WaterFix
12 hearings are being conducted are very limited in scope.
13 However, they have the potential of causing major
14 problems for a delta just on the brink of collapse.

15 The petitioners' request for a change in the
16 point of water diversions on the surface may not appear
17 to be a major threat to other water users for the economic
18 and ecological sustainability of the Sacramento-San Joaquin
19 Delta, but when one factors in the tunnels, the
20 ramifications of the proposed California WaterFix at this
21 point in time are incalculable.

22 The Bay-Delta ecosystem is said to be the most
23 studied water body on earth. The deplorable conditions
24 of the Bay-Delta is indicative of government's inherent
25

1 conflicts as water purveyors and as public trustees to
2 protect the other water right users and the public
3 trust resources.

4 The Bay-Delta ecosystem is said to be the most
5 studied water body on earth -- excuse me.

6 Next paragraph.

7 In the case of -- the preponderance of the
8 evidence speaks for itself, and no excuses under the
9 sun are going to make that reality any different. The
10 Hearing Officer and the State Water Board staff is
11 under a great deal of pressure. After all, this is the
12 last remaining bay-delta estuary on the west coast of
13 the Americas, and its fate rests in your hands.

14 We The People do not see the necessity for a
15 proposed tunnel. As explained to DWR personnel, we can
16 get them the water that they are desperately seeking,
17 and we can do it under existing law with the assurances
18 of a sustainable Bay-Delta ecosystem. We can do that.

19 So just moving on here, this is a Bureau of
20 Reclamation statement. I'm not adding this to
21 evidence. I'm just saying, "The California water
22 supply is in crisis. The administration is committed
23 to a long-term water supply improvement and
24 environmental restoration in California. Reclamation
25 is working in partnership with the State and local

1 entities to improve -- to achieve the dual goals of a
2 reliable water supply for California and a healthy
3 Bay-Delta ecosystem that supports the state's economy.
4 Other activities range from the dam safety at Folsom
5 Dam to the interpretation of the San Joaquin River
6 Restoration Program."

7 I'm going to skip that next thing and go on to
8 "Deplorable State of the Delta."
9 Billions of dollars of public funds have been 10
11 expended on a plethora of studies, models, and reports
12 which, if one measures the extent of the expenditures
13 and rates it according to the deplorable condition of
14 the Delta, we would have to ask ourselves, "What's the
15 end game?"

16 To begin with, the title of the so-called
17 California WaterFix in the Delta is a misnomer. The
18 Delta is not broken. It's not broken. It has been the
19 victim of a litany of broken government promises. And
20 a myriad of failed plans conjured up by DWR and
21 Reclamation over the past five decades, for the most
22 part, have failed to get any major projects off the
23 ground. It's essentially been floundering around on
24 self-serving peripheral issues.

25 DWR personnel and its consultants acknowledge
that the impending collapse of the Delta and the

1 potential threat to the state water supply deliveries
2 is the result of DWR's failure to provide the flood and
3 water rights fix procedures or protections mandated by
4 State government and the voters back in 1960.

5 The public needs to understand that this
6 latest fix is not new. The California WaterFix is the
7 latest in an ongoing series of plans initiated more
8 than 50 years ago. The petition requests to modify the
9 terms and conditions irrespective of the State Water
10 Board's permits and licenses. It's extremely myopic,
11 and it's difficult to challenge. As it stands now, the
12 fix is viewed as a moving target with crucial aspects
13 of the proposed action wafting in the ethos.

14 "Project operators' track record of
15 noncompliance."

16 Could you move that up, please? could you
17 move that up?

18 Historically, DWR and the Bureau have operated
19 projects in violation of the State Water Board-adopted
20 terms and conditions of their license -- to them --
21 issued to them by the State Board. Hundreds of water
22 quality violations spanning months at a time have
23 occurred without reprimand. The State Water Board held
24 a hearing and opted not to taking an enforcement action
25 against the State Water Project or CVP operators. The

1 recent assurances espoused by Director -- DWR Director
2 Mark Cowin that the State would be totally compliant in
3 the future -- with the future regulations adopted by
4 the State Board -- while it is encouraging that
5 Mr. Cowin wants to be compliant, the Department's
6 compliance track record says otherwise.

7 So, anyway -- and that's in my Exhibit No. 1,
8 Porgans 1.

9 Government documents substantiate the fact
10 that the Department of Water Resources and in some
11 cases the Bureau have operated their respective water
12 projects in a manner that -- I'm sorry -- in a manner that
13 exacerbates every drought that California has experienced
14 since the State Water Project and the CVP became operable.

15 There have been too many unanswered questions
16 by the petitioner and their consultants, fundamental
17 questions. The specific -- I struck that out, that
18 "specific locations of tunnels." I struck that -- I
19 don't know why it's still there.

20 Petitioners -- and forget that next part, "the
21 proposed project is only 10 percent."

22
23 The preferred alternative is still up in the
24 air. The biological opinion and the 401 certification,
25 renegotiation of the ESA approval as well as any other

1 fundamental issues remain unanswered. It is not
2 reasonable to expect the members of the public to
3 participate in the wait-and-see-what-sticks process.

4 It has been nearing nearly 100 years since the
5 State Department of Finance granted the Bureau of
6 Reclamation the 1927 and 1938 filings that provided it
7 the water rights that included provisions for Delta
8 salinity requirements.

9 In 2006, the State Board issued a cease and 10
desist order against the Bureau for threatening to
11 violate Delta salinity requirements. That matter is
12 still unresolved. All we have at this point are
13 promises of petitioners in their pending request that
14 they will meet whatever standards the Board sets in
15 this petitioner -- if the petition is approved.

16 That's the last part on that part. Now I'm
17 going to have to go into my other -- I want to make one
18 more comment.

19 We're tied up -- and forgive me for this -- in
20 legal minutia here. We've got to keep the big picture
21 in perspective. I understand that we have a narrow
22 view. It's about whether in fact it's going to need a
23 new water right permit or whether in fact it's going to
24 cause injury. That's the two issues we're concerned
25 about here. That's the first of what I was presenting

1 when I made my initial presentation.

2 So we got that part out. I won't have to go
3 into the details on that aspect of it.

4 And in my -- in my rebuttal -- my rebuttal
5 statement, the Board's team, DWR team took -- redacted
6 certain parts of my testimony. That's fine. I didn't
7 get it in until after the deadline, but that's okay
8 too.

9 So -- but I want to say that you left in that, 10 since
the Bureau has not provided information to
11 indicate that the total rates of diversion will be
12 within the permit limits, the permit is a new water
13 right and requires a new application. That's where I
14 concurred with Mr. Del Piero, a former Board member.

15 So, will the changes cause injury to any
16 municipal, industrial, blah, blah, blah, is a very
17 important question. Is there going to be injury
18 associated with this particular petition?

19 And I can't make any projections. I don't
20 have a crystal ball. Okay? But what I'm saying is I
21 have to look at history in order to be able to
22 understand where I'm at. So if we look back at the
23 track record, you know, and all the promises and all
24 the conditions and all of the hearings and everything
25 else that's taken place, you have to ask yourself, if I

1 came here and told you lies and just keep coming back
2 telling you -- or misstatements of fact, where's my
3 credibility?

4 So what I'm saying is is that there's a
5 credibility issue here on behalf of the Department of
6 Water Resources because they say one thing and they do
7 the opposite.

8 So I'm going to pull up the -- pull up the --
9 let me get my list of exhibits. I have to say, I'm
10 having some difficulties, you know, neurologically, so
11 you have to forgive me. I'm not usually in this kind
12 of condition.

13 So I want to pull up some of these exhibits
14 here. I want to pull up -- can you pull up exhibit --

15 Let's pull up Porgans 1. Here's my list of
16 exhibits. Excuse me. Exhibit -- Porgans Exhibit 1 is
17 the comment that was made in the policy statement by
18 Mr. Cowin, where he said he'll do whatever it takes to
19 comply. I want to go back to Porgans Exhibit No. 2 --
20 it's in there. You know that it said.

21 Porgans Exhibit No. 2, Bulletin 132-63 at Page
22 121. In that -- could you move down a page.

23 See, it talks about the project water yield as
24 used in this report is determined by the relationship
25 among three factors --

1 (Reporter interruption)

2 THE REPORTER: Mr. Porgans, I'm sorry. Could
3 you please slow down when you read?

4 MR. PORGANS: I've only got seven minutes.

5 THE REPORTER: I know, I'm sorry. I'm sorry.

6 MR. PORGANS: So it says, "Project water yield
7 as used in this report is determined by the
8 relationship among three factors: the water demands
9 upon the Delta pool; the water supplies available to
10 the Delta pool; and the capacity [sic] of the project
11 conservation facilities to develop supplies to meet
12 total demand. The yield of the project is determined
13 by comprehensive operation studies utilizing surplus
14 flows discussed in Chapter IV [sic] each decade from
15 1960 through 2020 as the basic water supply to the
16 Delta and utilizing the project demands set forth in
17 Chapter VI. The yield represents the quantity of water
18 that can be made available on a firm annual basis to
19 municipal and industrial users and for agricultural
20 users on a full irrigation supply basis during an
21 equivalent of six years of the seven-year critical
22 drought..." That's what it says.

23 So if we move to Exhibit 3, Page 95 -- lower
24 that please, Page 95.

25 Anyway, here we're talking about the water

1 supply, and we're talking about the Delta pooling
2 program. See, the Delta pooling program, the concept
3 was based upon the amount of surplus water that was
4 going to be available for them to export from the Delta
5 because they're not supposed to export any water that's
6 not surplus to the Delta.

7 So what I found, and this is in my exhibits -- let
8 me see if I can pull this up here.

9 Could you go to exhibit Porgans 3, 104 -- no
10 excuse me. It was stricken. DWR -- Porgans Exhibit
11 No. 8, Porgans 8.

12 This is talking about the water supply,
13 delivery reliability report.

14 MR. OCHENDUSZKO: Mr. Porgans, I'm sorry.
15 We're having a tough time finding Porgans No. 8.

16 MR. PORGANS: Well, maybe they took it out. I
17 can't help that. I know I submitted it. But anyway...

18 So I want to go on to Porgans 302. Can you
19 move it up, please? Thank you.

20 I'm looking at -- this is Maury Roos.
21 Everybody knows who Maury Roos is over there, at the
22 chief -- he's the chief hydrologist, semi-retired.

23 California's net water supply in the year
24 2000. The State Water Project provided less than 6
25 percent of the entire state water net annual supply.

1 That's it. There's no -- it only provides one third of
2 the total amount of water that the Metropolitan Water
3 District uses in an annual -- in a given year, and that
4 question -- I have questions about 6 percent because I
5 don't know if it includes everything.

6 Okay. So moving along. Go to 106, Porgans
7 106, please.

8 This is excerpts from State Water Boards
9 hearing regarding D1485 violations.

10 MR. LONG: Mr. Porgans, there is no Porgans 11 106.

12 CO-HEARING OFFICER DODUC: I believe he's
13 referring to 105.

14 MR. PORGANS: Oh, that's right. I am. Thank
15 you very much. I have to hand it to you. You really
16 have a pretty comprehensive understanding of what's
17 going on here. I would probably have to have brain
18 surgery.

19 Hold it right here. So --

20 CO-HEARING OFFICER DODUC: Mr. Herrick, you
21 may not move to strike that part.

22 Please continue, Mr. Porgans.

23 MR. PORGANS: I don't mean that -- I'm not
24 trying to be complimentary; I'm just telling you a
25 fact.

1 CO-HEARING OFFICER DODUC: Thank you.

2 MR. PORGANS: I'm impressed. I'm impressed
3 with all of you. I can't even imagine how you can do
4 this.

5 So anyway, this is a summary of recent D14- --
6 of the 1485 violations that were taking place back
7 in -- back in 19- -- 1992, '91, and 1990. And 1989.
8 So if you look at it there on that second water year,
9 1991, we had 218 violations of D18- -- D1485. This is
10 in your record. This is taken out of that particular
11 hearing.

12 If you want me to go back to the front page to
13 show you the source of that information, I can do that.

14 CO-HEARING OFFICER DODUC: No, we have it.

15 MR. PORGANS: In the first three years of the
16 drought, the Department of Water Resources was
17 exporting more water than any -- than ever before.
18 And so I want to move next to -- I'm trying to 19 hurry,
and I'm sorry to the court reporter.

20 Am I going to fast?

21 THE REPORTER: You're okay.

22 MR. PORGANS: Thank you so much.

23 THE REPORTER: I'll let you know.

24 MR. PORGANS: I appreciate that.

25 So anyway, I'm going to Porgans 100M. And

1 this is insight on the California water policy using
2 computer models. And in this particular comment by
3 Mr. Lund, it says all models are wrong, some are
4 useful. Okay? So that's where I'm at with models if
5 the models were really working.

6 And I have to give DWR credit because, during
7 normal years when we had enough flow, they can meet the
8 standard. It's only in those dry periods.

9 So what we found in 1990 is that they dropped 10
10 Oroville 25 feet and shipped the water south. They
11 came back in March and asked for a relaxation of
12 standard, which you gave them. So they were taking
13 water at that time.

14 So moving along here -- and that last exhibit,
15 it was estimated between 300- to 500,000 acre-feet that
16 they actually were able to abscond with.

17 So Porgans 121, please.

18 This is a memo, June 27th, 1990 between Jerry 19 Johns,
Assistant Division of Water Rights [sic], and 20 Dave
Berlinger. So in here it says, "Paul Fujitani of 21
22 the Bureau...called today to inform us that the Bureau
23 will not be meeting the 500 TDS requirement at Vernalis
24 in June. Evidently, fairly high salt levels were
25 experienced earlier this month. To obtain" -- you
know, the blah, blah, blah.

1 "Mr." -- second paragraph, "Mr. Fujitani also
2 said that the Bureau intends to try to meet the 500 on
3 a daily basis but not on a monthly basis as set forth
4 in Decision 1422. I stated that this is a significant
5 policy issue that the Division need to address, and we
6 need to communicate to the Bureau the need to make the
7 operations at New Melones more consistent with D1422.
8 I stated I would discuss this issue with you next
9 week."

10 Could you go to Porgans Exhibit 122, please.
11 Now, this one here is another memo between -- 12 this
12 is October 27, 1989. This is between Jerry Johns 13
13 and Beringer [sic]. So in this particular statement
14 here, it says -- and forgive for not being able to --
15 "Jerry Johns [sic] of the Bureau of Reclamation called
16 today to inform us that, starting this month, the
17 Bureau will not be making this" -- "making specific
18 releases to the water quality at Vernalis...this month
19 should be below the 500 TTDS [sic] at Vernalis.
20 Mr. Johannis," meanwhile, "stated that the water
21 accounts for both D1422 standards," to, "(500 parts per
22 TDS at Vernalis and 5 ppms," at -- "dissolved oxygen at
23 Rippon)," it says that 70,000 acre-feet and South Delta
24 Water Agency's objectives -- just give me another
25 minute. So it says -- I need to -- I need --

1 CO-HEARING OFFICER DODUC: Go ahead, continue.

2 MR. PORGANS: Thank you so much. I'm just --
3 really apologize. I -- I can't find my...

4 So anyway, it went on to say that Mr. Johannis
5 was concerned that, in next couple of months, water
6 quality objectives may not be achieved. He's telling
7 you this. This isn't a Board approval. This is
8 telling you.

9 So Mr. Johannis was concerned that in the -- 10 okay.
"The Bureau believes that water should not be 11
released to meet water quality at Vernalis the rest of
12 this year since these accounts are exhausted and the
13 storage level in New Melones is too low."

14 Could you go to the next page, please?

15 BOARD MEMBER D'ADAMO: Just a second. Is
16 there a date on this?

17 There we go. Thanks.

18 MR. PORGANS: Is that the next page? Okay.
19 Right here, on that paragraph where it's highlighted.

20 "I told Mr. Johannis that the staff's
21 willingness to allow increases above the 200 parts TDS
22 standard without recommending enforcement action last
23 year was based on the critical water supply conditions
24 that previous two years and the uncertainty of the 1989
25 water supply." However, "It was also influenced by the

1 fact that water from the storage in New Melones" --
2 "this year" -- "on the basis of a below normal water
3 year and concurrently [sic] New Melones is gaining
4 water to storage." They're gaining water to storage.

5 "I emphasized that the State Board did not
6 recognize the 70,000" as a "limit when it established
7 the D1422 standards."

8 So I mean, I -- you know I had a motion to
9 dismiss, you know, because of the issue that was raised
10 on the Cross Delta Channel capacity, which they didn't
11 have an answer to at the time. I'm sure they have one
12 now.

13 But I'm concerned that the petition itself
14 doesn't say it's going to increase the amount of water.
15 It's going to be ultimately taking. But it's one of
16 those situations where it's plausible. It's plausible.

17 So I'm saying that should we allow that? And
18 I'm also raising the issue about due diligence. Due
19 diligence. You know, we had from 1927, the Department
20 of Finance's application were turned over to the Bureau
21 to provide the Delta water quality objective.

22 This is 2017. And the full use of the water
23 that the Bureau claims it's entitled to is not going to
24 be consummated until 2030.

25 So what I'm saying to all of you is this. We

1 need to get a perspective here. And we need to
2 challenge -- I mean, it's not a good thing. It's not a
3 good thing if we're going to -- if there's no
4 disincentive for me to stick at 65 miles an hour,
5 somebody's going to give me a ticket, you know what I
6 mean? That's -- he's doing his job, he or she. If I
7 know I can get away with something -- I'm not going to
8 do it, but some people will. And in this case they've
9 taken advantage of your leniency, and that puts you in
10 a difficult position.

11 I do appreciate you giving me an extra few
12 minutes. And that concludes my testimony.

13 CO-HEARING OFFICER DODUC: Thank you,
14 Mr. Porgans.

15 MR. PORGANS: Does anybody want to ask any 16
questions? Because I'll be happy to --

17 CO-HEARING OFFICER DODUC: Is there any
18 cross-examination?

19 (No response)

20 CO-HEARING OFFICER DODUC: I don't believe
21 there is.

22 MR. PORGANS: I do have one last question,
23 though. You struck out my -- my motion to dismiss,
24 they said it was withdrawn. Okay? I didn't withdraw
25 anything.

1 CO-HEARING OFFICER DODUC: Correct.

2 MR. PORGANS: So did you ever make a decision
3 on the motion to dismiss?

4 CO-HEARING OFFICER DODUC: I believe we did.

5 MR. PORGANS: I couldn't find it, so if you
6 can...

7 CO-HEARING OFFICER DODUC: Mr. Ochenduszko,
8 would you make sure to give Mr. Porgans a copy?

9 MR. OCHENDUSZKO: Absolutely. And we'll also
10 update the website.

11 MR. PORGANS: And thank you.
12 And I want to thank you for letting me use the 13
computer before.

14 I thank you all and god bless you because, as
15 I said, I couldn't take it myself.

16 CO-HEARING OFFICER DODUC: Thank you,
17 Mr. Porgans. Thank you for a bit of refresher on the
18 history of the projects, which is so important.

19 MR. PORGANS: I've only had 45 years and 300
20 banker boxes of files. Anyway, thanks so much. Have a
21 good day.

22 CO-HEARING OFFICER DODUC: Thank you,
23 Mr. Porgans.

24 All right. Ms. Suard.

25 Before we get to you, Ms. Suard, I believe it

1 was Mr. Porgans' intention to move his exhibits,
2 including the ones that he did not withdraw, into the
3 record?

4 MR. PORGANS: Thank you so much. I concur
5 with what you just said.

6 CO-HEARING OFFICER DODUC: All right. Thank
7 you.

8 Is there any objection?

9 (No response)

10 CO-HEARING OFFICER DODUC: Then at this time,
11 we will accept into the record Mr. Porgans' exhibits
12 with the exception of those that we have redacted
13 pursuant to our previous ruling.

14 All right. Before you begin Ms. Suard,
15 Ms. Ansley, do you have something to say?

16 MS. ANSLEY: Yes. And this is Jolie-Anne
17 Ansley for the Department of Water Resources. And we
18 would like to lodge an objection up front to
19 Ms. Suard's testimony.

20 CO-HEARING OFFICER DODUC: The entirety of her
21 testimony?

22 MS. ANSLEY: Yes, on the first grounds, the
23 entirety of her testimony. Ms. Suard's revised
24 testimony was not submitted until May 22nd, obviously
25 not in red line, but it was not submitted -- it was --

1 the original deadline for revised testimony pursuant to
2 your April 13th ruling was April 19th, I believe. So
3 we do obviously object to any late-filed rebuttal
4 testimony.

5 Then I do have objections to the revised
6 testimony as well.

7 CO-HEARING OFFICER DODUC: So let me hear from
8 Ms. Suard first with respect to -- yes, I do recall you
9 submitted a very, very late revised testimony.
10 Your microphone is not on.

11 MS. SUARD: I was responding to your comments
12 for your ruling -- I'm not sure what date it was --
13 regarding my original rebuttal. And then I have to
14 say, I had pretty severe technical problems that your
15 wonderful staff has been going through helping me that
16 I had trouble uploading, actually, until just
17 yesterday.

18 It was resolved. So I'm -- I am not sure if
19 that was the reason for missing a deadline. I was not
20 aware that I missed that.

21 And Kyle may be able to clarify some of that.

22 CO-HEARING OFFICER DODUC: You did miss the
23 April 19th deadline, which was the deadline to submit
24 revised testimony per our ruling. Do you have any
25 offer of proof that you made the attempt to do so

1 before April 19th?

2 MS. SUARD: No. Without being in front of my
3 computer to be able to look at the time stamps, I
4 cannot say that.

5 CO-HEARING OFFICER DODUC: Ms. Ansley, given
6 that the missed deadline was the deadline to revise
7 rather than to submit to the initial testimony, I'm
8 inclined to give Ms. Suard a little bit of leeway.
9 But, however, the ruling that we made on April 10 13th
with respect to the section of Ms. Suard's
11 testimony that is stricken -- was it stricken from your
12 revised testimony which was submitted late but --

13 MS. SUARD: I believe so. I believe that any
14 of the objections -- it wasn't clear to me exactly. It
15 was -- to me, it was somewhat general. But I did
16 substantially revise and become very specific at --

17 CO-HEARING OFFICER DODUC: Revised in terms of
18 removing or redacting language rather than adding
19 language, right?

20 MS. SUARD: I removed, redacted. I -- though
21 I did add language that specified that was only about
22 Snug Harbor and Steamboat Slough. I narrowed the focus
23 of the rebuttal. I thought that's what you wanted.

24 CO-HEARING OFFICER DODUC: Ms. Ansley.

25 MS. ANSLEY: Two things. It was a little

1 difficult to, obviously, at the last minute review this
2 testimony because it was not in red line, so to compare
3 the two versions. Also, the newly submitted testimony
4 on -- I believe I got a copy of 5/22 -- included an
5 additional exhibit which would be a substantive change.
6 And that would be Exhibit 407. So I -- that's the
7 basis of that objection.

8 CO-HEARING OFFICER DODUC: Okay. Let us -- I
9 will take that objection under consideration. But will
10 allow Ms. Suard to proceed at this point with her
11 rebuttal testimony with that objection still to be
12 ruled upon arrangements sure

13 MS. SUARD: And an answer on No. 407?

14 CO-HEARING OFFICER DODUC: Go ahead.

15 MS. SUARD: That is a duplicate of the same
16 screen shots I have in previous -- like 104, for
17 example, is one of my previous -- SHR-104 PowerPoints
18 that I used. I'm just trying to simplify so I don't
19 have to go through all my different data.

20 So, for example, in what was just objected to
21 was already in the data, just compiled in a different
22 way.

23 CO-HEARING OFFICER DODUC: All right. We'll
24 take that into consideration.

25 MS. ANSLEY: And I --

1 CO-HEARING OFFICER DODUC: Anything else,
2 Ms. Ansley?

3 MS. ANSLEY: Yes, then I would like to lodge
4 some objections to her revised testimony. The
5 objections are as follows.

6 Ms. Suard, on -- she had split her testimony
7 into parts. Part 1 starts on Page 2 Line 16, Part 2
8 starts on Page 3, Line 11. I would like to object that
9 Parts 1 and 2 are not proper rebuttal testimony as they
10 do not respond to any parties' case in chief. Indeed,
11 they are actually just summarizations of Ms. Suard's
12 own case in chief in response to the noticed hearing
13 issues. So that would be Parts 1 and 2.

14 And then on Page 5, Line 3, through Page 6
15 Line 7, Ms. Suard is addressing rebuttal testimony
16 submitted by the DWR. And that would be improper as
17 surrebuttal hasn't started. So those would be my
18 objections to her testimony. If you need me to repeat
19 the page and line cites -- I didn't do a great job.

20 MS. HEINRICH: That last one, if you would.

21 MS. ANSLEY: Okay. That last one is Page, 5
22 Line 32 through Page 6, Line 7 is actually surrebuttal.

23 MS. HEINRICH: Thank you.

24 CO-HEARING OFFICER DODUC: Any response at
25 this time, Ms. Suard or Mr. Keeling?

1 MS. SUARD: I attempted to utilize a lot of
2 different documents to -- and be very specific. And
3 actually, the modeling -- those lines, those specific
4 to 32 -- Page 5, 32 through whichever lines she said,
5 Page 6 down to Line 7, I believe, that actually is sort
6 of summarizing what was DWR Exhibit 5 and
7 DWR Exhibit 66, Dr. Nader-Tehrani's original testimony,
8 which was basically summarizing other modelers'
9 testimony.

10 And it did cover both DSM-2, CalSim, and
11 particularly, electroconductivity issues in the Delta.
12 So that's actually what I'm responding to.

13 CO-HEARING OFFICER DODUC: Ms. Ansley.

14 MS. ANSLEY: Yes, again, the exhibits cited
15 here are rebuttal exhibits. It's expressly stating
16 it's going to rebuttal.

17 And, again, without a red line, it was
18 really hard to see. That was an easy substantive
19 addition I could see. You know, it's hard to see in
20 this testimony what is a substantive addition, but I
21 know that those are rebuttal exhibits and this is
22 rebuttal.

23 CO-HEARING OFFICER DODUC: Mr. Keeling.

24 MR. KEELING: Appearing specially for Snug
25 Harbor.

1 Ms. Ansley is correct that some of the cited
2 documentation was to rebuttal documentation. And the
3 -- Ms. Suard, who is not a practicing attorney, would
4 have done better to cite to the case in chief.

5 In fact, though, the rebuttal testimony from
6 Snug Harbor does respond to DWR-5 and 5 Errata as well
7 as 66, the original Nader-Tehrani testimony. Much of
8 Nader-Tehrani's rebuttal testimony was simply a
9 reiteration of the case in chief, as you recall.

10 So without apologizing for the lack of red
11 lining, which I understand made it more difficult, and
12 without apologizing for citations to rebuttal exhibits,
13 which obviously you don't want when you're submitting
14 your own rebuttal exhibit, nonetheless, it does respond
15 to the case in chief presented by DWR and the
16 Department -- and the Bureau.

17 MS. SUARD: I would like to correct the record
18 that I am a practicing attorney, just not in water law.
19 Estate planning and business.

20 MR. KEELING: So corrected.

21 CO-HEARING OFFICER DODUC: Good for, you
22 Ms. Suard. Stand up for yourself.

23 All right. I think at this point, I'd like
24 for us to take our lunch break and sort this out. And
25 then we will decide what to do next after we return

1 from our lunch break, Ms. Suard.

2 So why don't we go ahead and return at 12- --
3 you know what? Let's return at 1:00 o'clock.

4 (Whereupon, the luncheon recess was taken
5 at 11:54 a.m.)

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AFTERNOON SESSION

(Whereupon, all parties having been
duly noted for the record, the
proceedings resumed at 1:00 p.m.)

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CO-HEARING OFFICER DODUC: All right. Good
afternoon, everyone. It is 1:00 o'clock, and we are
back in session.

Before the break, we were getting ready to
hear rebuttal testimony by Ms. Suard. And Ms. Ansley,
on behalf of the Department of Water Resources, raised
two objections. And upon further consideration during
the break, I am now prepared to sustain those
objections.

Ms. Suard, you did indeed miss our deadline in 16 terms
of revising your testimony per our ruling.

There is no indication that we could find in
our record that you've made any attempt to alert the
staff or document the difficulties that you might have
with the FTP site in uploading your document.

Additionally, once you finally did submit late
your materials, you went outside the direction in our
ruling and added materials that constitute surprise
testimony, per Ms. Ansley's objection.

So what we have done in sustaining

1 Ms. Ansley's objections is also directed staff to,
2 during the lunch break, go back to your initial
3 testimony and redact, using a strike-out formatting,
4 the sections that we in our ruling directed you to
5 redact. That information will be distributed or has
6 been distributed.

7 MR. OCHENDUSZKO: So staff are going to be
8 putting hard copies of the redacted version of SHR-502
9 at the front of the room for everybody, as well as
10 providing those for Ms. Suard and Mr. Keeling.
11 Additionally, after the hearing today, we will be
12 posting that on our website.

13 CO-HEARING OFFICER DODUC: All right. And we
14 will designate it an exhibit number of?

15 MR. OCHENDUSZKO: SHR-502, staff revised.

16 (Protestant Snug Harbor Exhibit SHR-502
17 marked for identification)

18 CO-HEARING OFFICER DODUC: All right. At this
19 time, I will take a five-minute break for Ms. Suard and
20 everyone else to review this redacted material.

21 Ms. Suard, we are now ten months into this
22 hearing. And as you reminded Mr. Keeling, you are a
23 practicing attorney. This is the last allowance I will
24 make for you. Please step up.

25 We will resume at 1:07, at which time you may

1 present your rebuttal testimony in accordance with the
2 version that you now have in your hand.

3 (Recess taken)

4 CO-HEARING OFFICER DODUC: All right. It is
5 1:07. We are back in session.

6 MR. KEELING: I would like to thank the
7 Hearing Officers and the hearing staff for having done
8 that over lunch. Ms. Suard and I did exactly the same
9 thing. We were going through and excising as if we
10 were working from the original because she had
11 misunderstood the nature of the request in the ruling.

12 So we had done the same thing, and she is now
13 prepared to go. And we've tried to make sure that her
14 oral presentation is consistent with the redacted
15 version of her original that has now been provided.
16 Thank you.

17 CO-HEARING OFFICER DODUC: Please use -- when
18 you say that, please use the "staff redacted version."

19 MR. KEELING: Staff redacted, yes.

20 CO-HEARING OFFICER DODUC: Ms. Ansley.

21 MS. ANSLEY: And this is just a question,
22 clarification.

23 CO-HEARING OFFICER DODUC: Is your microphone
24 on?

25 MS. ANSLEY: Oh, yes. Jolie-Anne Ansley,

1 Department of Water Resources. Sorry.

2 Just to clarify, the stricken testimony, that
3 also includes the footnotes that go with that
4 testimony, correct?

5 CO-HEARING OFFICER DODUC: I believe that is
6 correct, but let me wait for concurrence.

7 MS. ANSLEY: So, for example, on Page 2, the
8 stricken testimony includes Footnote 5, but Footnote 5
9 is not stricken. I just want to make sure my
10 assumption is correct, that if it's --

11 CO-HEARING OFFICER DODUC: Yes, that is
12 correct.

13 MS. ANSLEY: Thank you.

14 MR. OCHENDUSZKO: I'm sorry, Ms. Ansley. So we're
15 talking about Footnotes 5, 6, and then it looks like
16 Footnote 8 on the following page?

17 CO-HEARING OFFICER DODUC: Move up, please.

18 Are you suggesting, Mr. Ochenduszko --

19 MR. OCHENDUSZKO: And that's all that I'm
20 tracking right now. Is that your understanding as
21 well?

22 MS. ANSLEY: I had just noticed Footnote 5. I
23 was just asking for clarification. I'll just assume
24 that, if the text is struck through, the footnote
25 itself is struck through, that it applies.

1 CO-HEARING OFFICER DODUC: That is correct.
2 All right. Now, Ms. Suard, you may present
3 your testimony.

4 NICOLE SUARD,
5 called as a rebuttal witness by Protestant
6 Group 41, having been previously duly sworn
7 was examined and testified further as
8 hereinafter set forth:

9 DIRECT EXAMINATION BY MR. KEELING

10 MR. KEELING: Ms. Suard, you have now taken a
11 look at Exhibit SHR-502, staff revised?

12 MS. SUARD: Yes, sir. Yes, I have.

13 MR. KEELING: And as revised by the hearing
14 staff, is this a true and correct copy of your rebuttal
15 testimony?

16 MS. SUARD: Yes, it is.

17 MR. KEELING: Could you please give an oral
18 summary of your rebuttal testimony and perhaps remind
19 us of your qualifications to do so?

20 MS. SUARD: Again, my name is Nicole Suard. I
21 am being a witness on behalf of Snug Harbor Resort LLC,
22 and I would like to ask, in giving this summary, that
23 we could go to SHR-104, Page 35. Just -- this is a
24 reference.

25 This is an aerial photograph of Steamboat

1 Slough. The photograph was edited to show where Ryer
2 Island is and Snug Harbor. And on Steamboat Slough --
3 and can you see Grand Island as well.

4 And I think it's helpful for anyone reviewing
5 any of the materials to understand locations in the
6 Delta because what happens in one location may not be
7 the same impact in another.

8 So my qualifications, I am talking about as a
9 marina owner and a long-time boater in the Delta, I am
10 very aware of flows and impacts and when there's low
11 flows, the impacts, high flows, in particular impacts
12 to drinking water wells on Steamboat Slough, lower
13 Steamboat Slough, and surface water as well.

14 So when I talk about impacts, I'm talking 15
15 about real life, not computer modeling. I'm talking
16 about personal observation not, you know, other
17 fabricated or estimated impacts.

18 I am most concerned with excesses when -- when
19 salinity spikes, when flows are too low, when flows are
20 too high. So my focus is not averages of monthly or
21 even daily. The salinity, water quality, general water
22 quality is very important, and what happens on lower
23 Steamboat Slough can be quite different than what
24 happens on upper Steamboat Slough. And that is what my
25 testimony and the documents I'm going to be presenting

1 are about.

2 And I am responding specifically to DWR-5
3 Errata; DWR-66, which is Dr. Nader-Tehrani's testimony.

4 And -- do you want me to -- okay.

5 MR. KEELING: Yes, go ahead and summarize your
6 testimony.

7 MS. SUARD: So going to -- to summarize,
8 during the earlier part of the hearings, when I asked
9 Dr. Nader-Tehrani what would be the impacts in the
10 North Delta, we were assured that there -- that the
11 water quality on Steamboat Slough, which is right by
12 Ryer Island, would remain fresh.

13 I -- so I would like to refer to -- if --
14 since you have the references of the location of Snug
15 Harbor, I would like to refer to SHR-50, please -- I'm
16 sorry -- 350. I said that wrong.

17 This is a document that was provided to me by
18 DWR in response to my repeated requests for
19 verification of how much flow would be left on
20 Steamboat Slough if the tunnels were built.

21 And this document shows upstream of Sutter and
22 Steamboat Slough, but below the proposed intakes. And
23 again, this was a document generated by DWR's modelers.
24 And this is basically a dry year.

25 And I was really concerned about impacts on

1 Steamboat Slough in low flow times: July, August,
2 September, October.

3 And if you -- you can see -- on this document,
4 you can see that at Steamboat Slough upstream of the
5 Sutter confluence is what's listed on this document.
6 And you can see that Boundary 2 appears to me to be the
7 worst-case scenario. And that might be on average 6-
8 to 700 cubic feet per second of flow left on Steamboat
9 Slough.

10 So can we go to SHR-359, please.

11 So these are compiled documents. And you can
12 see there's -- there's screen prints, and these are
13 from --

14 If you could blow it up a little bit more.
15 You can see the location of where these screen 16 prints
came from. And these represent water rights
17 along Steamboat Slough.

18 So to the right shows upper Steamboat Slough, 19 and to
the left is lower Steamboat Slough including
20 Snug Harbor.

21 But we have to go further. Can we go to the
22 next page, please.

23 This next document is a screen print showing
24 the DSM-2. And DSM-2 is one of the models that was
25 used for assessing water quality impacts in the Delta

1 from the proposed tunnels. And I want to note that on
2 the lower right side it shows that DSM-2 was updated
3 February 3rd, 2016. So that's prior to -- I mean,
4 that's after this documentation for WaterFix was done.

5 I wish to also note that I had been repeatedly
6 meeting with DWR modelers since 2008, and I -- in the
7 Bay-Delta conservation plan process. And I repeatedly
8 had pointed out that Liberty Island is a reservoir that
9 impacts the flows. And eventually that was corrected
10 or remodeled. And I also appointed out that the
11 cross-sections for Steamboat Slough were incorrect.

12 And I just -- I believe the Board should
13 understand that the cross-sections being used for DSM-2
14 still, after -- since 2009 asking for corrections, they
15 have not been updated for my area, Steamboat Slough.

16 Can we go to the next page, please.

17 DSM-2 utilizes cross-sections from surveys
18 that are done on Steamboat Slough. And we're told by
19 Dr. Nader-Tehrani that artificial intelligence, AI,
20 decides which cross-sections to use. However, the
21 cross-sections themselves come from humans who go and
22 do surveys and then provide the information. And I --
23 I don't know which humans decided where.

24 Can we go to the next --

25 CO-HEARING OFFICER DODUC: Hold on, Ms. Suard.

1 MS. SUARD: Okay.

2 CO-HEARING OFFICER DODUC: Before we move on,
3 Ms. Ansley?

4 MS. ANSLEY: Yeah. I just would like to
5 object that -- I'm happy to give a little leeway, but I
6 don't believe any of this is in her rebuttal testimony
7 in the slightest. It talks about bathymetry, DSM-2. I
8 understand that these are arguments that she made in
9 her case in chief, and I do recall these slides in this
10 testimony, but I think this is at this point well
11 beyond the scope of her revised -- staff revised
12 rebuttal or even her original rebuttal.

13 CO-HEARING OFFICER DODUC: I am looking, and I
14 don't see it either.

15 Would you point, Ms. Suard, to where?

16 MS. SUARD: Page 1, Item 2 says, "Will
17 proposed changes cause injury to any municipal,
18 industrial, agricultural uses of water, include..."
19 And my business is a public drinking water system, and
20 we also irrigate fruit and vegetables and landscape.
21 And --

22 CO-HEARING OFFICER DODUC: I'm sorry. I'm
23 confused now because that is simply a statement of the
24 key issues for Part 1.

25 Where specifically in your rebuttal testimony

1 does it reference the cross-section that you are
2 starting to testify on? I'm not seeing it.

3 MS. SUARD: I do not believe I said the words
4 "DSM-2" on this.

5 CO-HEARING OFFICER DODUC: Or reference the
6 cross-section issue.

7 The objection is sustained.

8 MS. SUARD: Okay. I'll move on to the other
9 issues, then.

10 Could we see -- well, sorry. I don't have
11 the -- could we -- SHR-360, please.

12 So this graphic was prepared by me. And what
13 it is a map showing -- which was added to -- I'm sorry
14 -- to show the location of monitoring stations at
15 Rio Vista, lower Sacramento River, and three different
16 monitoring stations on Steamboat Slough.

17 And I added to this also. I put the circles
18 around the actual monitoring location stations. I put
19 a yellow dot to show the rough location of Snug Harbor,
20 and I put blue arrows to show relative locations of
21 homes or businesses along the Steamboat Slough.

22 And what you see there is numbers, like where 23 Snug
Harbor is, it's 28 plus 85. That's 28 residential
24 home parcels that are waterfront on Steamboat Slough,
25 and 85 RV sites and mobile home sites. And then

1 there's also the marina that has covered berths and
2 open berths. And everybody consumes water there.
3 That's a public drinking water system there.

4 There -- you see there's a -- it says 6 plus,
5 and it's a marina. That's another marina that I assume
6 has a drinking water system.

7 There are other homes along Steamboat Slough.
8 And you'll see there's an arrow that says 2 and 1 and
9 just -- I wanted to make a reference that there are --
10 it's not just Snug Harbor. There's a lot of people on
11 Steamboat Slough.

12 Can we go to -- this is a reference for
13 location. Can we go to SHR-62, please. I'm sorry.
14 It's 362.

15 This brings up again, the same that --
16 Document 350. But what I did on this one was I wanted
17 to emphasize Sacramento River at Rio Vista water
18 compared to the Steamboat Slough flow.

19 And in Boundary 2 in September -- I picked
20 September because September happened to be a month that
21 other people seemed to be referencing in the hearing,
22 and it was also a month that I could just, you know,
23 understand exactly how flows are. September tends to
24 be a very low flow month normally.

25 So I wanted to make note of how low the flows

1 would be at Rio Vista as well as that 700 cfs on
2 Steamboat Slough.

3 Can we go to the 363, please.

4 So then I compiled the graphic for Steamboat
5 Slough along with the graphic called DWR-901. And
6 that's just one section of 901. And at -- basically
7 combining what we're being told when there's 700 cubic
8 feet of flow at monitoring station SSS -- because
9 that's the name of it. Then the EC at SUS, which is at
10 the confluence of Steamboat and Sutter Slough, would
11 be, based on the computer modeling, 180 EC.

12 There was no information provided what would 13 be --
provided by DWR or USBR of what would be the
14 salinity levels down by Snug Harbor. What was provided
15 was a general statement by Dr. Nader-Tehrani and others
16 saying that it would remain fresh, that historically
17 Steamboat Slough was fresh all the way around Ryer
18 Island. It's freshwater. And the modeling showed that
19 it would remain fresh.

20 So I'd like to point out that the lower part
21 of the graphic shows Boundary 2 which, you know, may be
22 the worst-case scenario, as the low flow. You can see
23 on -- at Rio Vista. And it represents that there would
24 be an increase up to 700 EC at Rio Vista.

25 And this is, again, other people's graphics,

1 but I related them to these locations.

2 CO-HEARING OFFICER DODUC: And, Ms. Suard,
3 where in SHR-502 staff revised is this discussed?

4 MS. SUARD: Page 2, Page 28 -- Line 28. I see
5 the petitioners and their computer remodeling staff did
6 not recognize the location of nor analyze the impacts
7 to drinking water wells during construction phase or
8 long-term operation. And there is nothing in the
9 record to validate DWR or USBR claim of no injury.
10 I'm providing testimony regarding that
11 information.

12 MR. KEELING: That's consistent with other
13 exhibits and testimony that have been admitted in
14 rebuttal on the question of location, often in terms of
15 groundwater -- for example, Mr. Nakagawa's -- which
16 respond to the lack of information coupled with the
17 assertion of no injury in light of that lack of
18 information from DWR.

19 CO-HEARING OFFICER DODUC: Tenuous linkage,
20 but I will allow it for future reference. Please keep
21 in mind that, when you present your testimony here
22 during a hearing, it is supposed to be a summary of the
23 written testimony that you have provided and not
24 necessarily introduction of new statements based on
25 exhibits that you've provided that are not referenced

1 directly in your written testimony.

2 MS. SUARD: Yes, ma'am.

3 MR. KEELING: Thank you.

4 MS. SUARD: Could we go to SHR-367, please.

5 So I, in attempting to show that what is
6 modeled is -- does not reflect real life and real
7 impacts, in September of 2015, the flow on Steamboat
8 Slough was actually maybe the lowest on record, and its
9 average was a thousand cubic feet per second.
10 DWR proposes an average of 700 cubic feet per 11 second.

And so in other words, they're proposing lower
12 flow than what we experienced in September of 2015.
13 And, for example, what DWR had estimated would be 180
14 EC, for when there's that low a flow at that SUS
15 monitoring station, it was actually more at 220.

16 Could we go to the next graphic, please.

17 CO-HEARING OFFICER DODUC: And how much time
18 more time will you need to wrap up?

19 MS. SUARD: Just maybe five minutes at most.

20 CO-HEARING OFFICER DODUC: All right.

21 MS. SUARD. SHR --

22 CO-HEARING OFFICER DODUC: Let's give her five
23 minutes to wrap up.

24 MS. SUARD: I'm sorry. It's supposed to be --
25 I'm sorry. I'd like to go to 367, please.

1 Okay. 368. This is a chart. It's DWR's 316.
2 And I just wanted to pull out that graphic to show that
3 the -- we've always -- we used to talk in parts per
4 thousand, PPT.

5 And the correlation of what's fresh and what
6 isn't was discussed by Dr. Nader-Tehrani. And so I
7 wanted to point that out, what is the level of fresh.
8 Dr. Nader-Tehrani actually himself had said he
9 considered anything under 300 EC as fresh.

10 Can we go to the next -- 369, please.
11 So this is again September 2015. And I'd like
12 to point out that a thousand cubic feet per second at
13 SSS does not necessarily mean that there will be a
14 thousand cubic feet per second of flow down by Snug
15 Harbor because there are many farmers' intakes. There
16 may be some flow coming from Sutter Slough, but it can
17 be lower flow on lower Steamboat Slough compared to
18 upper Steamboat Slough.
19 In any case, using the data provided online, 20 and
the link shows where the data came from, the
21 graphic, assuming --

22 CO-HEARING OFFICER DODUC: And, Ms. Suard, let
23 me interrupt you right here because I expect we're
24 about to hear an objection that this is outside the
25 scope of your rebuttal testimony.

1 MS. SUARD: Again --

2 CO-HEARING OFFICER DODUC: Hold on.

3 Ms. Ansley.

4 MS. ANSLEY: Yes, Jolie-Anne Ansley. And we
5 would just like to sort of add to that obvious
6 objection that -- that is indeed our objection, is that
7 these are now introducing -- these are not referenced
8 in her revised testimony in any way. And it's now
9 introducing a series of very technical graphs that we
10 may be forced to deal with I guess on surrebuttal, but
11 certainly this is a little bit of a -- based on her
12 original testimony, none of these topics were
13 discussed. So we would of course object. This is
14 outside the scope and improper rebuttal on that
15 surprise, the whole thing.

16 CO-HEARING OFFICER DODUC: And again,
17 Ms. Suard, point me to where in your direct testimony
18 this is discussed.

19 (No response)

20 CO-HEARING OFFICER DODUC: Anything else to
21 add, Ms. Ansley?

22 MS. ANSLEY: Yeah. I would just like to say
23 that we're fine with the revised testimony. We would
24 just move to strike these particular exhibits, the
25 sequence of slides that started with the very technical

1 flows and salinity. Thank you.

2 CO-HEARING OFFICER DODUC: And at some point,
3 Ms. Ansley, I will need for you to list those exhibits
4 to which you are objecting.

5 MS. ANSLEY: Our practice is to get the rough
6 every day, so I should be able to look up when these
7 exhibits -- you know, what the first number was. I
8 didn't write that down. I'm sorry.

9 MS. SUARD: I believe that it fits within
10 Page 2. It's Line 28 and thereafter. That what I'm
11 trying to establish is that DWR made and USBR made a
12 claim that it will not harm other legal users of water.

13 And it was based -- their computer modeling
14 was based on assumptions that their witnesses,
15 including Dr. Nader-Tehrani, expressed that it would
16 remain fresh. And I was responding to that, showing
17 that specifically, no, based on Dr. Nader-Tehrani's own
18 testimony and own assessment of fresh, what happens on
19 lower Steamboat Slough is different than what happens
20 on upper Steamboat Slough.

21 CO-HEARING OFFICER DODUC: I understand,
22 Ms. Suard, but unfortunately, that is actually, unless
23 you can point me to it, not specifically included in
24 your rebuttal testimony.

25 And this is -- I think this is the challenge

1 we have. Your perspective and your experience at Snug
2 Harbor and Steamboat Slough obviously lends you a
3 certain expertise that is valuable in this hearing.

4 However, the fact that your arguments are not
5 expressly included, outlined, and specified in your
6 written testimony, both during direct and now during
7 rebuttal, it is difficult for, obviously, others to
8 respond but also challenging for us as we go through
9 the record and try to weigh the evidence that is
10 presented before us.

11 I, you know, certainly encourage you to -- as
12 we proceed in these proceedings, to be more clear in
13 including in your written testimony the exact, specific
14 arguments and points that you obviously are ad libbing
15 very well by introducing your exhibits, but we actually
16 need to have those arguments in writing as part of your
17 written testimony.

18 MS. SUARD: Thank you. And I had attempted
19 that with the rebuttal.

20 CO-HEARING OFFICER DODUC: Okay. So,
21 Ms. Suard, at this point I'm going to have to sustain 22
23 Ms. Ansley's objection because, although you do bring a
24 lot of experience and knowledge which you are conveying
25 in your verbal testimony and referring to your
exhibits, it is not clearly spelled out in your written

1 testimony, and it's not fair to others who need to
2 review it and prepare cross-examination to not have
3 access to that information that you have which you are
4 now providing verbally.

5 And the general statements that are made in
6 your written testimony, while there is a tenuous
7 connection to the more specific arguments you are
8 making, I am still faced with a fairness issue in that
9 this is not something that was provided ahead of time
10 for other parties to review and be prepared to
11 cross-examine on. All right.

12 In the future, Mr. Keeling, perhaps I could 13 ask
you to lend your assistance --

14 MR. KEELING: Certainly.

15 CO-HEARING OFFICER DODUC: -- to Ms. Suard?
16 We value her input and want to make it as 17
meaningful and productive as possible in these
18 hearings.

19 MR. KEELING: As I understand it, the problem
20 here is that the text of the written testimony did not
21 specify and cite and explain the relevance of these
22 series of charts and exhibits.

23 CO-HEARING OFFICER DODUC: And the arguments;
24 more importantly, the arguments that she --

25 MR. KEELING: The arguments that go with those

1 exhibits. And we understand that, respect that.

2 And to the extent that this -- her material
3 responds to rebuttal as well, I'm going --

4 CO-HEARING OFFICER DODUC: Bring it back in
5 surrebuttal.

6 MR. KEELING: I'm going to propose that she do
7 exactly that.

8 CO-HEARING OFFICER DODUC: Yes. Thank you.
9 We look forward to hearing your surrebuttal.

10 MS. SUARD: Thank you.

11 MR. KEELING: Thank you.

12 THE COURT: I expect at this time that there
13 is no cross-examination for Ms. Suard?

14 MS. ANSLEY: No.

15 CO-HEARING OFFICER DODUC: All right. And at
16 this time, does Ms. Suard wish to move any of these
17 exhibits into evidence, or does she wish to defer to
18 surrebuttal?

19 MR. KEELING: I don't know that moving them
20 into evidence precludes her from doing a surrebuttal.
21 So why don't we move them at this time into evidence,
22 those that have not been ruled on adversely by the
23 Hearing Officers.

24 CO-HEARING OFFICER DODUC: And I believe
25 Ms. Ansley has some objections to some of the exhibits.

1 Please come up.

2 MS. ANSLEY: Yes. Thank you. DWR will be
3 happy to provide the list of exhibits that we intend to
4 include in the motion to strike I made orally on the
5 record. So we will provide that list as soon as we see
6 the rough transcript.

7 CO-HEARING OFFICER DODUC: When will that be?

8 MS. ANSLEY: Or we can take a minute and just
9 try and look at the exhibit list and try and recall
10 which -- call up the exhibits.

11 CO-HEARING OFFICER DODUC: No, that's fine.

12 Will you see the transcript by when?

13 MS. ANSLEY: We always get -- we get them
14 tonight, pretty --

15 CO-HEARING OFFICER DODUC: We'll expect that
16 tomorrow.

17 MS. ANSLEY: That would be fine. Thank you.

18 And will not write out the whole objection 19
again. We'll just provide the list of exhibits
20 pertinent to that objection. Is that fine?

21 CO-HEARING OFFICER DODUC: Correct.

22 MS. ANSLEY: Thank you.

23 CO-HEARING OFFICER DODUC: Thank you.

24 With that, I believe that concludes our 25
presentation of rebuttal.

1 Was there an issue, Ms. Des Jardins?

2 MS. DES JARDINS: I just wanted to note that
3 Ms. Ansley was just allowed to present objections after
4 the exhibits had been moved into the record.

5 CO-HEARING OFFICER DODUC: She made her
6 objections before the exhibits were moved into the
7 record.

8 MS. DES JARDINS: Okay. Thank you.

9 CO-HEARING OFFICER DODUC: Okay. At this
10 point, then, we have a couple of outstanding objections
11 that we still need to rule on which included objections
12 to some exhibits that LAND -- actually some or one,
13 Dr. Leinfelder-Miles', I believe, testimony that was
14 objected to by the Department. We've received the
15 written objection. We have received the written
16 response. We will review that and issue our ruling
17 later this week.

18 We now have objections to Ms. Suard's exhibits
19 which we will receive tomorrow and will also rule on
20 later this week.

21 Are there any other outstanding objections?

22 MS. HEINRICH: Not that I know of.

23 CO-HEARING OFFICER DODUC: Is there any other
24 outstanding objections that anyone is aware of?

25 (No response)

1 CO-HEARING OFFICER DODUC: All right. I will
2 now close all objections on all exhibits on the issue of
3 admissibility.

4 Let me now turn our attention to
5 cross-examination exhibits that were used during the
6 rebuttal phase. If you wish to submit exhibits that
7 you used for cross-examination during rebuttal, please
8 do so by noon this Friday.

9 Ms. Heinrich, I believe, will provide further
10 details if necessary, but you do not have to submit
11 those exhibits into the record. But if you wish to do
12 so, again, do so by noon on Friday.

13 Do we need a revised list of index as well.
14 Mr. Ochenduszeko?

15 MR. OCHENDUSZKO: With that, we ask parties to
16 provide a revised exhibit identification index.

17 CO-HEARING OFFICER DODUC: Right. And then
18 finally, let me touch upon surrebuttal.

19 As you know, we've heard several requests with respect
20 to surrebuttal. Our normal hearing practice is
21 to not hold surrebuttal. And if surrebuttal is used,
22 then it naturally would immediately follow the rebuttal
23 portion of the hearing. And it is done so live without
24 submission of written testimony or materials.

25 However, as we know by now, this is not a

1 typical or normal hearing. And as stated in our
2 April 13th, 2017 ruling, we will allow for surrebuttal.

3 Because rebuttal has gone quicker than anticipated, we
4 do have a little bit of time in our noticed hearing
5 schedule.

6 So what we're going to do is, contrary to our
7 April 13th ruling, we will require parties
8 participating in surrebuttal to submit whatever
9 testimony, exhibits, PowerPoints or other files they
10 intend to use in surrebuttal to us through the FTP site
11 no later than noon on June 9th, 2017.

12 And we will resume the hearing with
13 surrebuttal on June 15th, 2017.

14 The hearing team will update the website and
15 e-mail the service list with this new schedule. I will
16 remind all the parties that surrebuttal testimony must
17 be responsive to evidence submitted during Part 1
18 rebuttal. Surrebuttal does not include evidence that
19 should have been presented during the case in chief or
20 during rebuttal. It also does not include repetitive
21 evidence.

22 Cross-examination of surrebuttal witnesses
23 will be limited to the scope of their surrebuttal
24 testimony. And unless we approve changes, the order of
25 presentation for surrebuttal will be the same as for

1 rebuttal.

2 Are there any questions or other housekeeping
3 matters we need to address before we adjourn?

4 Ms. Des Jardins.

5 MS. DES JARDINS: Yes. I received a response
6 from the Department of Water Resources at 10:00 p.m.
7 last night which stated with respect to my May 8th
8 letter that there were no documents responsive to my
9 request.

10 And I wanted -- was requesting that the 11
petitioners clarify that because it seemed to be
12 stating that none of the documents which were -- there
13 were no -- which were specified in some detail existed
14 currently, and I would like that clarified in the
15 response. It is an issue of being able to have
16 complete information about the technical model to
17 respond to it as evidence presented in the hearing.
18 And if that evidence doesn't exist, that is also a
19 material fact.

20 CO-HEARING OFFICER DODUC: Mr. Mizell,
21 Mr. Berliner, would you like to respond for the record?
22 Thank you for recognizing that that was not a 23
rhetorical question.

24 MR. MIZELL: Tripp Mizell, DWR. The
25 Department has responded with a number of documents for

1 Ms. Des Jardins, and we believe that we have provided
2 her everything that is responsive to her request. We
3 double-checked that work last night and confirmed that
4 our belief is -- still holds. So there are no
5 additional documents other than those we've already
6 provided her that we believe fall within the scope of
7 her request.

8 CO-HEARING OFFICER DODUC: Thank you.

9 You asked for a confirmation; you've got your
10 confirmation even though you may not like the answer,
11 Ms. Des Jardins.

12 MS. DES JARDINS: I believe that clarifies it.
13 Thank you.

14 CO-HEARING OFFICER DODUC: Mr. Herrick.

15 MR. HERRICK: John Herrick, South Delta
16 parties.

17 For surrebuttal, is there any guideline for
18 any witnesses? Ten minutes or five minutes or an hour?
19 I'm not trying to push for long periods of time, but is
20 there any guideline we should shoot for so we don't
21 have somebody talking for an hour?

22 CO-HEARING OFFICER DODUC: Less than rebuttal.

23 MR. HERRICK: Okay. Thank you.

24 CO-HEARING OFFICER DODUC: Because surrebuttal
25 should be even more focused and should be responsive to

1 rebuttal.

2 MS. MESERVE: Good afternoon. Osha for LAND,
3 Osha Meserve. I'm going to telegraph Kelley Tabor a
4 little bit here.

5 I think with respect to at least one example,
6 there wasn't information the case in chief of
7 petitioners with respect to an entire topic, and then
8 there was very extensive rebuttal presented. And so I
9 guess I would think that probably the surrebuttal to
10 those topics may need to be 15 minutes, or we may need
11 longer for our experts in order to respond to that
12 volume of testimony.

13 CO-HEARING OFFICER DODUC: Longer in terms of
14 verbal testimony?

15 MS. MESERVE: Well, I guess I would just say
16 it shouldn't be any shorter, and we might need a little
17 more time. We had a 15 --

18 CO-HEARING OFFICER DODUC: I'm sorry,
19 Ms. Meserve. A little more time to present your verbal
20 rebuttal --

21 MS. MESERVE: Yes.

22 CO-HEARING OFFICER DODUC: -- I mean
23 surrebuttal?

24 Ms. Meserve, we're now in the tenth month. 25 What
has been our standard practice when it comes to

1 time limits?

2 MS. MESERVE: You have selected to extend it
3 when necessary. I guess I just --

4 CO-HEARING OFFICER DODUC: Upon a showing of
5 proof.

6 MS. MESERVE: Yes. Thank you.

7 MS. DES JARDINS: I just wanted to concur.
8 There was extensive new evidence about climate change
9 impacts that was submitted. So yes, we will be
10 addressing that. Thank you.

11 CO-HEARING OFFICER DODUC: I so look forward
12 to it. All right.

13 Not hearing anything else, that's it. We are
14 adjourned until June 15th.

15 Again, I will remind everyone to meet the
16 deadlines that are specified.

17 If you have trouble, please let the staff
18 know.

19 If you cannot access the FTP site and it is
20 non-voluminous in terms of material you are sending,
21 use the e-mail service list, but get your information
22 out on time. Please be as concise as possible.

23 But in Ms. Suard's case, perhaps be more
24 expansive in your testimony, in your written testimony,
25 and try to be as direct as possible in addressing the

1 points that you wish to make in your surrebuttal.

2 All right? Thank you, everyone. We will see
3 you on June 15th.

4 (Whereupon, the proceedings recessed
5 at 1:53 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

I, DEBORAH FUQUA, a Certified Shorthand Reporter of the State of California, do hereby certify that the foregoing proceedings were reported by me, a disinterested person, and thereafter transcribed under my direction into typewriting and is a true and correct transcription of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, nor in any way interested in the outcome of the cause named in said caption.

Dated the 28th day of May, 2017.



DEBORAH FUQUA

CSR NO. 12948